

STATE GOVERNMENT

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BY

FRANK G. BATES

*Professor of Political Science
Indiana University*

AND

OLIVER P. FIELD

*Assistant Professor of Political Science
Indiana University*



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PREFACE

THIS book has been written to serve as a text-book in a survey course in State Government offered to undergraduates in colleges and universities. The authors have been governed in the selection of material and in its treatment by the experience gained in the classroom through several years' teaching of the subject. No attempt has been made to make radical departures from the traditional methods of presentation. Some minor variations both in topical arrangement and in emphasis from the models set by previous writers in this field will be detected by the reader. While the topics treated have, for the most part, been arranged in their logical order, occasional modifications have been introduced where experience has shown that effectiveness in presentation may be increased.

For example, only the general theory of the initiative and referendum is presented in the chapter devoted to the activities of the electorate. Since the controversies over the value and effects of these devices have centered about their application to ordinary legislation, the discussion of their merits and demerits is placed in the chapter on legislatures.

The chapters dealing with the relations between the federal government and the states, and between the states themselves, are somewhat more detailed than is the case in most books on state government. The same may be said of the chapter on state constitutions. These important topics the authors believe to have been inadequately dealt with in most texts. Although these subjects are somewhat technical, it has been found that a lively interest in them among students may be aroused.

The authors are convinced that the relation of existing organs and practices to those of the past will be more clearly perceived by the student if historical backgrounds are presented in connection with the discussion of each institution rather than if such backgrounds are brought together in a preliminary historical chapter. It has been observed that a goodly number of students approach the study of state government without having had any contact with the fundamental concepts of political science. Consequently, a brief preliminary chapter is introduced devoted to the nature and pur-

poses of government and to the presentation of the fundamental definitions and distinctions in this field of knowledge. In this preliminary chapter and throughout the book an effort has been made to emphasize the idea that popular government exists solely to perform services for the people. To that end stress has been laid upon "functions" and "services" rather than upon "powers" and "prohibitions."

The unusual extent of space devoted to the subjects of legislation and finance indicates the relative importance of these topics in the opinion of the authors. Preliminary to the detailed consideration of each of the chief functional divisions of the subject several paragraphs of a somewhat theoretical nature have been introduced discussing the nature of the function and its relation to the governmental process as a whole. But at the same time an effort has been made to treat state government as an active process. Election procedure, the steps in the enactment of a statute, in the preparation of a budget, the trial of a case, as well as the extra-legal influences which operate in government, have been emphasized.

It may appear to some that the authors have not given full faith and credit to current formulas and practices of democracy. It is true that these have not been accepted as final. Like those of the past, present theories and institutions are accepted as but transitory. The technique of popular government is but imperfectly developed and popular government itself is still on trial. Mass action in government sometimes becomes only a little less tolerable than that of the autocrat. Experimentation through trial and error and the development of theory upon which to project further experimentation must still go forward. Recognizing present imperfections, the authors have, however, sought to avoid injecting a tone of "reform" into the book.

Three state constitutions have been inserted as an appendix, typifying those of the earliest decades, the mid-nineteenth and twentieth centuries. Some teachers may find in these convenient materials from which to set exercises in state constitutional development. Since the book is intended to serve as an introductory text, an elaborate apparatus of footnotes has been omitted. Likewise, extensive bibliographical lists, including special treatises, monographs, and articles in the technical journals, have been dispensed with. In their stead will be found brief "reference lists" which, it is hoped, will be of practical value as supplementary reading, and which are likely to be available in every college library. Included in the lists are references to the various manuals, books of readings,

collections of documents which are now available in increasing numbers. To Professors Morris B. Lambie of the University of Minnesota, Robert E. Cushman of Cornell University, and Mark C. Mills of the College of Arts and Sciences, and James J. Robinson of the School of Law of Indiana University, the authors desire to acknowledge their indebtedness for helpful suggestions offered after a perusal of portions of the text. The authors are also indebted to Professor Leonard D. White and the Macmillan Company for permission to reproduce the chart of the Administrative Organization of the State of Indiana which appeared in Professor White's text on Public Administration and which was originally prepared by one of the present co-authors. The books of Professors Arthur N. Holcombe of Harvard University and Walter F. Dodd of Yale University, which represent pioneer work in the hitherto little explored field of state government, have been found particularly helpful in the preparation of this book.

FRANK G. BATES

OLIVER P. FIELD

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STATE GOVERNMENT

STATE GOVERNMENT

CHAPTER ONE

INTRODUCTION TO THE STUDY OF POLITICAL SCIENCE

THE FUNDAMENTAL purpose of government is everywhere and always the same. This purpose is to satisfy certain wants of those who have organized it or who are responsible for its perpetuation, and this is equally true whether it be the government of a military despot or one deriving its power from the people themselves. In modern governments of a popular character it may be said that the purpose is to perform services for the citizens.

The activities of man are directed toward the satisfaction of his wants. Some human wants can be amply served by the individual independently of other individuals. The Crusoe on his island may by his own unaided efforts satisfy some of his most elementary needs, but such is not man's normal state.

Human
wants satis-
fied by:

1. Individ-
ual effort

Experience has demonstrated the fact that a very wide range of human wants can be satisfied through voluntary coöperation. As a result of these voluntary associations emerge various economic relations between individuals. Among them are the relation of master and servant, employer and employee, buyer and seller, landlord and tenant, and a great variety of contractual relations. Man's instinct for fellowship leads him to form other contacts with his kind. First there is the family and then a variety of relations ranging from the ordinary unorganized intercourse of neighbors, through the more formal relations of the society, the club, and the fraternal order. These we call social relations.

2. Coöpera-
tion

Whenever the benefits to be derived from coöperative action are to the individual clearly greater than the immediate discomforts involved, voluntary coöperation is not difficult to secure. But when

immediate individual advantage is not apparent or preponderant, some persons in the community are certain to refuse to coöperate with their neighbors in a given enterprise. In many cases the failure of some persons to coöperate results in no disadvantage to the whole group. If, for example, a neighborhood outing is proposed and a certain family declines to participate, the refusal does not necessarily mar the success of the occasion. There will be, however, some projects where the general good of the community does depend upon the coöperation of all. If, in a densely populated but unorganized neighborhood, the citizens coöperate to install a sanitary sewer, but a single householder refuses to join in the undertaking, the welfare of all the neighborhood is involved. Such refusal of one householder may mean discomfort, disease, or even death in surrounding families. In such cases a public interest develops and the individual must be forced through some form of organized action to coöperate. When society deems it expedient for the common good thus to exercise compulsion, a political situation may be said to have arisen. We term the action to be taken in such a situation political action and the relation thus established in the community a political relation.

3. Political action

It is the peculiar function of government to perform those services for the community in which political action may be necessary. Such, for example, are the protection of persons and property from violence and the prevention of the exploitation of the weak by the strong. Not every political act of government is performed by the actual employment of force, but there is always the possibility of a resort to it. Government having been established, it is customary at the present time to make use of it as well for the performance of a variety of services not of a political but of an economic or social character, such as, for example, the supplying of water, the building of roads, and the furnishing of the means of public education.

The purpose of government

Groups with respect to proper functions of government:

1. Individualist
2. Collectivist

The particular services rendered by government may vary widely with time and place. At all times men differ widely in their views as to the value of government as an institution for any purpose and as to the proper scope of its activity. The *Individualist* insists that government is inherently evil, but that in man's present imperfect state it is a necessary evil. He believes that its action should be closely restricted to the maintenance of peace and order, and looks forward to the day when through man's moral advancement government may be abolished altogether. The *Collectivist* believes that the government should perform a wider range of services than does the individualist: that it should build hospitals, care for the poor,

supervise conditions under which people work in factories or live in tenement houses. He believes that the government should provide free education for all who desire it, and even force it upon those who do not desire it. He would say that the proper sphere of government is to do anything which the citizens believe can better be performed by it than by another agency.

The *Socialist* would go farther in extending the field of governmental action. He would have the government perform many of the services now performed by private individuals or by corporations. To him it appears especially desirable that the government should own the great natural resources, such as mines and water-power, and should own and operate the basic industries as well as the machinery of economic distribution. The *Communist* would even advocate, in addition to these things urged by the Socialists, the abolition of private property and a much more extensive supervision of private action.

3. Socialist

4. Communist

At the other extreme stands the *Anarchist*, who believes that government inevitably means tyranny. He believes that whatever temporary evils might result, the ultimate gain would justify the immediate abolition of government. He believes that all desirable social action could be secured through voluntary coöperation. To him the greatest service which government could perform would be to abdicate immediately all its powers and functions.

5. Anarchist

Nearly all people may be classified in one of these five groups on the basis of their views on the proper functions of government. The anarchists and the communists, standing at opposite extremes, although perhaps the most vociferous, are the smallest groups, the collectivists forming at the present time the largest group of all. It should not be imagined that there is a clear line of demarcation between the body of beliefs and doctrines held by one of these groups as compared with those held by the next in logical order. Each group tends at its extremities to merge into the ones on either side.

However, whatever may be the views of these groups, the fact remains, as stated in the opening sentences of this chapter, that the function of popular government is to perform services for the people. The study of government is concerned, for the most part, with the structure and operation of the machinery which has been devised to perform the various services which the people desire to be performed. The actual composition of this organization, the methods of selecting those who are to compose the governing body,

Scope of the study of government

and the functions to be performed by each, as well as the manner in which the functions are performed, are to a large extent the subject matter of any course in government.

Terminology of
Political
Science

Every body of organized knowledge has a special terminology and a first step in the study of that field consists in mastering the meaning of the technical words and phrases in which the subject matter is expressed. Technical words are necessary because popular terms are likely to have a variety of meanings, or to have such vague meaning that they are not sufficiently accurate to distinguish between various situations which arise in the particular field under discussion. Medicine and law have their own highly technical terminologies. The same is true of chemistry and biology. Such is also the case in lesser degree with Political Science. Political Science itself may be defined as the organized body of knowledge relating to man in his political relations as distinguished from his moral, social, or economic relations. The study of Political Science has been impeded by the fact that many words are there employed in a technical sense which are in common use in another and somewhat vague and popular meaning. Furthermore, there has been an unfortunate lack of agreement among scholars in the field of Political Science as to the use of technical terms employed in their writings. In order, therefore, that the student may be on his guard throughout his study of state government, a few of the more common technical terms to be encountered will be explained in the pages immediately following. Others will be explained at points throughout the book where a discussion with concrete applications may be indulged in at greater length than is desirable at this point.

Political
Science
defined

The state

The expression "state government" has been employed in the title of this book, and the word "government" has repeatedly been used in this chapter. What do these words mean? The word "state" is used in more than one sense and care should be taken to distinguish between them. In its more precise and technical use the word is employed to denote a group of people living within a definite territory, being associated with some degree of permanency for the maintenance of a government and possessing sovereignty. The necessary elements, then, are people, territory, association, permanence, government, and sovereignty. Used in this sense, the state is an international unit among the states of the world.

The forty-eight component members of our Union are legally denominated states, and it is as applied to these units that the word is employed in the title of the present volume. It will be obvious,

presently, that these "states" are not such in a technical sense, since they do not conform to the definition already given in not possessing "sovereignty." It is likewise obvious that in law and in practice they will continue to bear the name.

Sometimes the word "state" is employed in a popular fashion with a meaning akin to that of the term "nation," which will be presently considered. In that case the use is somewhat synonymous, too, with the word "country" as popularly used when we say that a certain person "comes from a foreign country," or that "our country" takes a particular attitude toward a given international situation.

The state is not merely a group of people possessing a territory, unity, sovereignty, permanence, and government. It is all this, but it is something more and apart from the group. It is an association or society distinct from the members who compose it and in that respect resembles a corporation. X, Y, and Z may form a corporation, but they are not the corporation. The corporation is a fourth person, a legal person, entity, or being distinct from the members who associated in it. So we must conceive of the state as a corporate person. It is the supreme political person since it possesses "sovereignty."

Here we are brought to a consideration of the meaning of the term Sovereignty sovereignty. This term is employed in two senses in political science. In the first place, it is employed to signify a condition of freedom from external control. It means that the state is free from control by other states and that under the rules of international law it is the equal of every other state. This does not signify that in practice the state may do anything it desires. Absolute freedom among states would mean international anarchy. In the second place, the word "sovereignty" is employed to denote the ultimate and supreme legal power which the state possesses over all persons and things within its territorial boundaries. This is sometimes spoken of as "internal" sovereignty to distinguish it from international or "external" sovereignty. Every state possesses both internal and external sovereignty.

At this point it will be well to distinguish between state and Nation "nation." "Nation" is a word which is loosely used, but it may be defined as a group of people having predominantly a common language, race, civilization, and habits of thought, but especially a consciousness of unity and separateness from other groups. The people composing a nation may be located wholly within a single state or they may be within the boundaries of several states. The Poles

before the late war were an example of a nation living within three states. In like manner a state may include several nations as was illustrated by the Austro-Hungarian monarchy before the war. The term "nation," then, expresses a social concept, while "state" has a political significance. "Nation" is also used in a popular sense as the equivalent of "country," meaning an international state. In the United States the government at Washington is constantly referred to as the "national government." This expression has gained such currency that it would be mere pedantry to seek to avoid it, and it will be found thus used in the pages of this book. Care must be exercised in interpreting written or oral expositions of government or of international relations because it is frequently impossible to determine in which sense the words "state" and "nation" are used except by reference to the context.

Government

It will perhaps be recalled that it was said above that one of the elements of the state was organization to maintain a government. Government is the organization, machinery, or agency through which the state performs its functions. Whatever the state may undertake to do, it is through the government that it is accomplished. When an attempt is made to distinguish between the various types of government which exist or have existed in the past it will be found that the most significant classification is that based on the location of the governing authority.

Governments
classified
as:

1. Auto-
cratic

When the complete power of government is located in a single individual, the government is called an autocracy. The supreme power may be vested in a small group or class, and in that case is known as an aristocracy. If an aristocracy employs its powers offensively to its own advantage regardless of the welfare of other classes, it is called an oligarchy. These two forms of government—autocracy and aristocracy—were once the almost universal forms of government among the important states of the world. At present they have practically disappeared among civilized peoples, although the government of Japan is theoretically still an autocracy. Finally, the sovereign powers may be exercised by the mass of the people and this is said to be a popular government. It has been said that the purpose of popular governments is to perform services for the people. If the mass of the people take a direct part in policy-forming—i.e., in deciding what services shall be undertaken and how they shall be accomplished, we properly call it a democratic form of popular government, or a democracy. If, on the contrary, the work of determining policy is delegated by the people to rep-

2. Aristo-
cratic

3. Popular

Popular
government
either
demo-

representatives who are to act in their stead, we have a representative form of popular government. Democracy and representative government, then, are subclasses or varieties of popular government. It should be observed that whether it be a democratic or a representative government, the work of carrying policies into execution is delegated to representatives, for not even in a democracy do the citizens undertake actually *en masse* to carry out the policies which they have formed. Manifestly democracy can exist only within areas which are small and among small populations. The New England "town" government is the best example of direct democracy in this country. Such a government would obviously be impracticable for the United States, for a state, or even for a moderate-sized city. In these cases representative government must be resorted to. A common error in the use of words is to apply the term democracy to all popular government. This word "democracy" is furthermore used with a social significance to denote a condition of social equality or equality of opportunity. Such uses of the word have no necessary connection with political democracy.

The particular type of government having been determined, there yet remains the problem of the distribution of the powers and functions of government. There is never more than one government in any state. But the government may be divided into various branches, departments or sections. The territory of a state may be so large in its extent that one governmental organization may be thought insufficient to perform adequately the many services demanded by the people in all parts of the state. Or, very probably, the people of the various communities of the state will wish to have local governmental organizations to perform those services which are thought to be primarily local in their nature. It may even be that the people of one locality will wish a different type of governmental organization to perform services in their locality from that desired by many other localities. Thus it will be seen that, although there is only one government, there may be many divisions of that government for the purpose of distributing the performance of functions on a territorial basis. At times it is desirable to make such a distribution because the state may have been formed out of a group of existing states. These may refuse to combine with the others unless they receive assurance that they will have separate governmental agencies to perform the services desired by the people of that particular state. This situation existed to some extent in the

cratic, or
repre-
sentative

Distribu-
tion of
powers of
govern-
ment:
Territorial

formation of the German Empire, and to a lesser degree in the United States.

1. Unitary government

The territorial distribution of the work of government is usually touched upon in the constitution and the distribution may be accomplished in one of two ways. The central government, in terms more or less express, may be authorized to establish such areas and organs of local government as it may see fit, and to give to them such powers and functions as may be deemed proper. But when such local authorities are set up they are still subject to the control of the central government. The local governments thus set up may be altered or abolished and their powers modified at the will of the central government. Thus the central government is placed in a strong position of control over all governmental subdivisions. Under such circumstances the government is said to be *unitary*. It will be observed that it is not the absence of local governmental units which makes a government unitary, but rather the subordination of such units to the central government. France, Belgium, Norway, Sweden, Spain, and Italy are examples of unitary government.

2. Federal government

In other instances the local areas of government may be recognized by the constitution and the distribution of functions between them and the central government carefully regulated in that instrument. In such cases the government is said to be a *federal* government. Again it is not the existence of local areas which makes a federal government, but their relation to the central government. In the United States, for instance, the thirteen states were recognized in the Constitution and their relation to the central government was carefully defined. This was accomplished by enumerating the particular powers which should be conferred upon the central government and by specifically stating that all others were to be retained by the states or the people. The effect is that each has its own field of action and neither can encroach upon the other.

Distribution of powers of government:
Functional

1. Legislative
2. Executive
3. Judicial

The work of government may likewise be viewed from a functional as well as a territorial point of view. By a functional classification is meant the dividing of the work of government according to the nature of the tasks to be performed. The traditional classification of governmental powers upon this basis is that of legislative, executive, and judicial functions. The legislative function is said to be that of formulating the policies of government, or deciding what services shall be performed by government. The executive function has usually been defined as that of carrying policies into effect or

performing the services which have been decided upon by those exercising the legislative function. The judicial function is said to be that of interpreting the policies laid down by the legislative authority and of determining the validity of the acts of those who perform executive functions.

Within the present century there has appeared in some quarters among students of political science a disposition to reëxamine the classification of governmental functions and to reclassify the activities of government into five functions instead of three. According to this classification, the administrative and the electoral are recognized as distinct functions. The legislative and the judicial functions are conceived of as retaining the same boundaries as always. But among the growing variety and complexity of the work which the executive branch has been called upon to perform within the last century there have been distinguished not a single function but two. These functions to which the names executive and administrative have been given differ not only in their essential characteristics, but they call also for distinct qualities of ability and training in those who are to perform them. No corresponding administrative branch of government has as yet been set up, but both executive and administrative functions are performed within the same branch. The nature of the distinction between these functions will be further considered in a subsequent chapter.

4. Admin-
istrative

Likewise, the increasing extent and variety of the participation of the citizen at the ballot box in the processes of government have made it seem proper to some scholars to recognize in modern governments a distinct function—the electoral, performed by the electorate, distinguishable from each of the four functions already mentioned. This function will be the subject of the subsequent chapters on Parties and Elections.

5. Elec-
toral

Everywhere in the United States save in the field of local government it will be found that the machinery of government is organized into three branches or “departments”—legislative, executive, and judicial. To each of these is assigned, for the most part, the performance of the function appropriate to its name. The practical purpose of this division is to obtain the advantages of the division of labor and of specialization of effort. A more powerful reason actuating the minds of those who planned this distribution was that the government thus set up should conform to the doctrine of the separation of powers. The French political writer, Montesquieu, had about

Three
branches
of gov-
ernment

Doctrine
of separa-
tion of
powers

the middle of the eighteenth century called attention to the fact that there existed in government these three "powers" or functions now familiar to all. He furthermore declared that the distribution of these three "powers" into the hands of three distinct branches or organs of government was necessary to the maintenance of political liberty. This doctrine, which has come to be known as the doctrine of the separation of powers, found wide acceptance, especially in France and America. Having gained general currency at that time, the doctrine was generally observed in the framing of the federal and the state constitutions. Although it is not formally incorporated in the text of many constitutions, the courts have quite generally read it into those documents until it is an accepted principle of our constitutional law. Not a few statutes have been declared unconstitutional because they attempted to confer upon a certain branch functions which under this doctrine must be conferred only upon another.

Plan
of this
volume

The plan which will be followed in this study of state government is first, to study the relations between the central government and the states and between the several states of the Union themselves. Then a general survey of the nature and contents of state constitutions will be undertaken. Following this general survey will come a chapter dealing with the direct activities of the electorate, including political parties, elections, and the suffrage. From that point on the structure and operation of the actual machinery of state government will be considered at length, including a detailed study of the structure and work of the state legislature, the state executive and administrative agencies, and the state courts. Finally the structure and operation of local government other than of cities in the states will be studied, since these local authorities are to so large an extent engaged as agents of the state in carrying into effect state policies.

City government, although employed as an agency of state government, is to a greater and an increasing extent occupied with the formulation and administration of its own policies. Since city government, too, is a subject so extensive as scarcely to admit of adequate treatment in a text of this character, and is usually made the subject of a distinct course of study in colleges, no attempt is made to deal with it in this book.

In view of the fact that the subject matter of this introductory chapter is of an abstract and somewhat technical character, the outline presentation of its contents in the tabular form below may be of assistance to the student:

- I. Nature of the political relation.
- II. The purpose of government.
- III. Groups with regard to views of proper functions of government:
 1. Anarchists
 2. Individualists
 3. Collectivists
 4. Socialists
 5. Communists.
- IV. Scope of government.
- V. Definitions:
 1. Political Science
 2. The State
 - a. Uses of the term
 - (1). Internationally independent unit (correct use)
 - (2). Subdivision of an internationally independent unit (incorrect use).
 3. The Nation:
 - a. Uses of term
 - (1). A social group (correct use)
 - (2). Synonymous with internationally independent state (incorrect use).
- VI. Classification of Governments on the basis of the exercise of sovereignty:
 1. Autocratic
 2. Aristocratic
 3. Popular
 - a. Democratic
 - b. Representative.
- VII. Distribution of powers of government:
 1. Territorial distribution
 - a. Unitary
 - b. Federal
 2. Functional distribution
 - a. Legislative
 - b. Executive
 - c. Judicial
 - d. Administrative
 - e. Electoral.

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CHAPTER TWO

FEDERAL-STATE RELATIONS

THE GOVERNMENT of the United States was classified as federal in the preceding chapter because the territorial distribution of powers between the central and state governments is provided for in the Constitution of the United States. When the present central government was established in 1789 the people gave to it certain powers and functions. Many of them had been exercised by the states prior to that time. The state governments had not always exercised them wisely, however, and for that reason they were taken away from the states. Other powers and functions were given to the central government because they were believed to be of such a nature that they could be exercised to the best advantage by a single government. The powers thus granted to the central government are called *delegated* powers. The central or, as it is often called in popular speech, the federal government is commonly referred to as a government of delegated powers for that reason. It possesses only those powers which have been given to it. All powers not delegated to the federal government belong to the states and can be exercised by them alone.

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Powers of
central
govern-
ment
delegated

These delegated powers are of three types. 1. Some powers are expressly enumerated in the Constitution and are therefore known as enumerated powers. The power of Congress to pass laws on such subjects as patents and copyrights, coinage of money, the establishment of an army or navy, and the process of naturalization, are illustrations of enumerated powers. 2. But Congress is also empowered to pass such laws as are necessary and proper to carry out any of the enumerated powers. Powers of Congress derived in this manner are said to be implied. The power to establish post offices and post roads is expressly given to Congress, but the city and rural free delivery system is probably not included within the literal meaning of the terms post office and post road. However, Congress may establish such a system because the power to do so can be inferred from the express power referred to above. But in order to imply a power from an expressly enumerated one, the

Types of
delegated
powers:

1. Enumerated

2. Implied

former must be fairly within the meaning of the latter. Whether a power can be implied or not is then a matter of interpretation. Congress in the first instance is the body to decide whether a power can be implied or not; but in the final analysis it is the Supreme Court of the United States which must decide whether an enumerated power is sufficiently broad in meaning to include the one sought to be implied from it. The fact that the exercise of the power thus sought to be implied would be convenient is not alone sufficient to allow the implication; but the court will be more likely to view the implication favorably if it is convenient, suitable, and almost necessary to the effective execution of the enumerated power. 3. A third type of power is the resultant power. A resultant power is one implied from several enumerated powers. Instead of being implied from a single enumerated power it is implied from several enumerated powers taken as a group. The power to control immigration is not an enumerated power. Neither is it an implied power, because it is not implied from any single enumerated one. But it is a resultant power, because it is implied from the powers of Congress over foreign commerce and the naturalization of aliens as well as the power to make treaties. The power to issue paper money results from the power to borrow money and to coin money.

3. Resultant

Increase
in exercise
of
national
powers

During the early years of our history the central government did not exercise its powers to their fullest extent. Some powers were not exercised at all for many years following the establishment of the present central government. But as the country developed and industrial and commercial activities expanded, the people demanded that the central government exercise its powers more fully. As a result of this, Congress began to use its powers to accomplish more effective regulation of industrial and commercial activities than had been possible as long as the problem had been left to the states. Some people immediately drew the conclusion from this increased exercise of federal powers that the federal government was encroaching upon the province reserved to the states. This would seem to be a mistaken conclusion. The federal government has no authority to exercise any power not delegated to it, and the only way in which it can obtain new powers is through the medium of constitutional amendment. Aside from the powers which have been granted to the central government by constitutional amendment it has no more power now than it had when first established in 1789. The appreciable increase in the exercise of those powers of which it was

possessed has misled many persons into making the erroneous conclusion adverted to above.

The powers of the states are called *residual*. The states possess many more powers than the central government and they perform an infinitely greater variety of functions and services for the people than is true of the federal government. Unless a man wishes to become naturalized, mail a letter, transact interstate business, apply for a patent or copyright, pay an income tax, sue in the federal courts, or live in one of the possessions of the United States he seldom comes into contact with the federal government. Even the bootlegger is subject to state as well as federal laws. This does not mean that the powers of the federal government are not of great importance to the people. The conduct of foreign relations, the regulation of foreign and interstate commerce, the establishment and operation of a postal system, and a large number of other functions performed by the federal government are of the highest importance to the people of the United States. But it is nevertheless true that the average person is in much closer contact with his state and local government than he is with the federal government, and that by far the greater body of rules and regulations under which he lives and does his work from day to day is that formulated and enforced by the state and local government.

States
have
residual
powers

Some of the powers given to the federal government exclude the states entirely from any control over the subjects included in the particular grant. Whenever exclusive control of a particular subject is intrusted to Congress the laws passed by Congress in that connection are supreme and state laws on that subject are of no effect. But, on the other hand, Congress has no power to legislate concerning subjects the control of which has been reserved to the states. The states have as complete control over the subjects reserved to them as Congress has over the subjects which have been placed under its jurisdiction. Each is supreme in its own field, subject, of course, to the restrictions contained in the Constitution of the United States. But not all of the powers delegated to the central government are of the exclusive nature of those just considered. The fact that certain powers have been delegated to the central government does not necessarily mean that the states are excluded entirely from any exercise of those powers. There are some subjects which have been placed under the control of the central government which are by their very nature susceptible of local regulation. If Congress does not take any affirmative action with regard to these subjects the

Exclusive
and con-
current
powers

states may make reasonable regulations concerning them. But if Congress enacts any laws relative to them, such laws have the effect of suspending the state laws previously in effect. Powers thus susceptible of exercise by both the central and state government are called concurrent powers. The power to pass bankruptcy laws is an illustration of a concurrent power. The standards of weights and measures are also subject to both state and national regulation.

From the foregoing paragraphs it will be seen that the states are not independent or sovereign units of government. They are only parts of a larger whole which we call the Union. The central government has its own sphere of activity and the states have theirs. Each of them acts directly upon the people; each has its own officers and machinery of government. Together they carry on the business of government in the United States. Controversies will naturally arise over the question of how far the powers of each extend in a particular case. The framers of the Constitution foresaw that this would happen and provided for a peaceable method of settling such disputes. The Supreme Court of the United States is the body that finally determines the extent of the constitutional powers of Congress or of the states. This is often a very difficult task, and one which brings the Supreme Court into direct contact with the work of government as it is carried on by the state and national governments. Quite naturally the judges of the Supreme Court have their own ideas concerning the interpretation to be given to some of the vague phrases used in the Constitution in apportioning the powers of government between the state and central governments. The views of the judges on questions of government will reflect to a greater or lesser extent the prevailing current of political and economic thought of the people. The American people have demanded a continually increasing exercise of power by the federal government. The number of services which the federal government has been asked to render has increased by leaps and bounds. Because of this the Supreme Court has tended to be somewhat liberal in its interpretation of the extent of the powers of Congress. But it should not be forgotten that the Supreme Court has often checked the federal government from overstepping the plain bounds of its powers and warned it that if the people wish the central government to perform a function not already intrusted to it, the proper method by which to transfer such functions from state to congressional control is by amending the Constitution. An example of such a transfer of function is to be found in the Eighteenth Amendment. By this amend-

ment the people took from the states the sole power to control the manufacture and sale of intoxicating liquor and gave a share of it to Congress. But this was not done until several attempts had been made to have Congress control the subject without this grant of power. In each attempt the Supreme Court declared the statute passed by Congress unconstitutional because the control of the subject had not been delegated to Congress. The same course has been followed with reference to the subject of child labor, and a constitutional amendment on this subject is now awaiting ratification by the legislatures of the states.

The Articles of Confederation contained a provision permitting Canada to join the United States if she wished to do so. When the Constitution of 1787 was framed this clause was changed so as to give to Congress general control over the admission of states to the Union. Not all of the territory of the United States was organized into states at the time of the making of our present Constitution, and at the present time the United States owns important possessions which are not member states of the Union. These territories are under the control of Congress and do not enjoy all of the privileges and immunities accorded to states. Therefore the people of the territories are usually seeking to have them admitted to the Union as states.

Admission
of new
states

Congress "may" admit states to the Union, but is not compelled to do so. Neither can Congress force the people in any territory of the United States to become a state against their will. The territories usually have a form of government which includes a legislative department, the members of which are selected by popular vote. When the people in a territory wish to become a state the territorial legislature petitions Congress to pass an *enabling Act*. In this Act Congress directs that the people of the territory shall elect a constitutional convention to frame a suitable constitution for the proposed state. Sometimes Congress lays down various restrictions to be observed in making the constitution. A constitutional convention is then called; a constitution is framed, submitted to a popular vote, and, if ratified, is sent to Congress. In a few instances the people of the territory have chosen a convention which has framed a constitution without the passage of an enabling act and have then petitioned Congress to be admitted to the Union. If Congress decides in either case to admit the state and approves the constitution submitted to it, a *statehood bill* is passed. This bill, when

Steps in
admission:

1. Petition
to
Congress
2. Ena-
bling Act

3. Statehood bill

passed, is similar to an ordinary law except that it is irrevocable. The reason for this is that if Congress could repeal a statehood bill, any state might be subject to ejection from the Union at the will of Congress. The original thirteen states would not be subject to ejection in this manner and that would place the other states in the Union in a different position from that of the original states. This would mean that the states would not be politically equal, and the framers of the Constitution intended that all states should be equal in that respect. When the statehood bill has been passed, and signed by the President, a proclamation announcing the admission of the state is issued by the Secretary of State. Twenty-eight states have been admitted in the manner outlined above.

4. Proclamation of admission

Two states have been admitted to the Union without having passed through the territorial stage of government. Texas and California were not in the territorial stage when admitted. Five states were carved out of the territory of some existing state and admitted. The Constitution provides that this may not be done without the consent of the state from which the new one is formed, but in the case of the admission of West Virginia this portion of the federal Constitution was disregarded in the heat of Civil War. Virginia was not asked whether she would consent to the establishment of a state within the territory belonging to her, but New York, Virginia, North Carolina, and Massachusetts, respectively, consented to the formation of Vermont, Kentucky, Tennessee, and Maine as states.

Conditions as price of admission

As has been pointed out, the people of a territory cannot force their way into the Union as a state, but must obtain the permission of Congress to enter. In a number of instances Congress has imposed restrictions upon the territories before allowing them to enter the Union. Missouri was forced to change her constitution so as to allow free negroes to enter that state. Nevada was compelled to give the negro the right to vote as one condition of her admission. Ohio had to promise not to tax lands within the state which belonged to the United States for a period of five years after their sale. Utah was denied admission until she complied with the requirement of Congress that the practice of polygamy be abolished, and Oklahoma was compelled to promise that the state capital would not be moved for a period of ten years. The President may also impose conditions on incoming states by refusing to sign the statehood bill until his conditions are complied with, and in the case of Arizona, President Taft delayed admission until the initiative, referendum, and recall

provisions of the proposed constitution were removed. Congress could, of course, have passed the statehood bill over the President's veto, but this would not often happen. Thus it is clear that incoming states are often subjected to various restrictions by either Congress or the President. However, once the state has been admitted to the Union it is politically equal to all the other states. These new states, therefore, have the same power to control their own domestic affairs that the other states have. There being, then, no provision in the Constitution of the United States restricting state action on the subject of polygamy, on the location of state capitals, or on the subject of the initiative, referendum, and recall, the states which had been forced by Congress or the President to change their constitutions on these topics as the price of admission to the Union can turn about and change their constitutions back to their original form. Once inside the Union the states may frame their own constitutions, make new ones at will, and change them, providing they observe the limitations contained in the Constitution of the United States. Congress may keep the territories out of the Union unless they agree to the conditions imposed upon them, but the states cannot be compelled to adhere to these conditions once they are admitted to the Union.

There is one qualification which should be made of the general statement found at the close of the preceding paragraph. If the restrictions imposed by Congress are of a financial nature and the states are admitted on the strength of their promises with regard to such matters as taxation of federal lands, they must live up to their promises, and these restrictions may not be evaded although the states are inside the Union. Such agreements do not destroy the political equality of the states and therefore do not come within the reason of the rule of political equality. The states must, however, keep their financial agreements with Congress.

The United States could not exist without the states, and because of this certain duties devolve upon the states which must be performed in order that the Union may be preserved. The duties of states to one another will be considered in the next chapter. At this point only those duties which the states owe the federal government will be considered.

The states are under a duty to conduct elections for federal officers. Presidential electors are state officers and they are selected in such manner as the legislature of the state directs. If there is a dispute over an electoral vote the state is given a share in settling the controversy. Congress does not attempt to settle a question of disputed

Duties of
states to
Union:

1. To conduct
federal
elections

electoral returns from a state until the state itself has failed to do so.¹ United States Senators formerly were chosen by state legislatures, and even under the present system of popular election the legislature and governor of a state participate in filling vacancies in the senatorial representation from their state.² Members of the lower house of Congress are elected from districts in most instances, and these are laid out by the state legislature. For many years Congress made no rules governing the conduct of congressional elections. At the present time many phases of them are still regulated by state law and they are administered entirely by state election officers. The states play an important part in the conduct of federal elections. If they were to refuse to perform their duties in this connection the Union would soon fall apart. There seems to be no method of compelling a state to conduct federal elections, however, but it is very unlikely that any state would refuse to perform this function.

2. To consider amendments submitted by Congress

The state legislatures are agencies of the federal government when they participate in the process of amending the Constitution of the United States. State legislatures are not subject to state constitutional restrictions when they are considering the ratification or rejection of proposed constitutional amendments. The state legislature receives its power to participate in the process of amending the federal Constitution from that instrument itself,³ and the grant of power to the legislatures there found overrides any restrictions on the legislatures found in the state constitutions. State legislatures are under a duty to consider amendments proposed and submitted to them by Congress. This does not mean, however, that they must ratify them. Each legislature is to decide for itself whether it wishes to ratify or reject the amendments submitted to it. Congress may choose to submit proposed amendments to state conventions, but if it chooses to submit them to the legislatures the latter have no alternative but to consider them.

3. To appoint militia officers

Congress is given the power to organize, arm, and discipline the militia, but the states are given the power to appoint officers of the militia.⁴ If the states failed to appoint militia officers, that branch of the military organization of the United States would be rendered

¹ On this point see Ogg and Ray, *Introduction to American Government* (2d ed.) p. 228; Dougherty, J. H., *The Electoral System of the United States*, chap. ix.

² See Constitution of the United States, Amendment XVII.

³ U. S. Const., Article V.

⁴ U. S. Const., Article I, Section 8.

ineffectual because Congress has no power to appoint them. The state is, therefore, under a duty to appoint officers of the militia and is also obliged to train the militia in accordance with rules and regulations prescribed by Congress.

The states owe a duty to the Union not to secede. A bitter controversy raged for many years following the foundation of the present central government as to whether a state could or could not secede from the Union. The dispute was settled for all practical purposes by the Civil War. It is now settled that the Union is an indissoluble one and that no state can secede from it without the consent of the other states. The Union is intended to be permanent.

Not only do the states owe certain duties to the Union, but the Union and the federal government owe certain duties to the states. One of these is to protect the states against foreign invasion.⁵ The states are not permitted to maintain an army or navy, so they are unable to defend themselves against a foreign enemy. It is only just, therefore, that the central government should be bound to aid the states in case of invasion. There is little danger that it will not do so, for an invasion of a state is also an invasion of the United States and would be regarded as a cause for war ordinarily.

A second right of the states is to receive aid in suppressing domestic uprising. If the state legislature is in session it is the body authorized to ask the President for help, but if the legislature is not in session the governor of the state is authorized to issue the call for help.⁶ It is not always easy to tell what constitutes an uprising. The governor may ask the President for assistance, but the President may not think that the situation is serious enough to warrant sending regular troops into the state. In such a case the President is the final judge of whether or not he will send troops into the state in answer to the call of either the governor or the legislature. The President may in some cases send troops into the state on his own initiative, and even against the protest of the state governor. This may be done if the disturbance is of such a nature that it interferes with some activity of the federal government, such as carrying the mails. The same may be true in case some activity which is under federal regulation is being interfered with. Interference with interstate commercial transactions would come in this class. A distinction should be made between the cases where the disturbance

4. To refrain from secession

Rights and privileges of states:

1. Protection from foreign invasion

2. Aid in suppressing domestic uprising

⁵ U. S. Const., Article IV, Section 4.

⁶ *Ibid.*

affects some federal function and where only state interests and the enforcement of state laws are involved. The federal government may always act in the first case, but may or may not act when requested by the state to do so in the second.

3. Guar-
anty of
territorial
integrity

A third privilege of a state is that of territorial integrity. No state may have its boundaries changed or any of its territory taken away from it without its consent.⁷

4. Repub-
lican
form of
govern-
ment

The fourth privilege guaranteed the states is that of a republican form of government.⁸ It is not easy to define the term republican government, but it was probably used by the founders of our government in the sense of some type of popular government, such as representative or democratic as distinguished from the autocratic or oligarchic type of government. It is to be presumed that when Congress admits a state to the Union the government of that state is republican in form, and because of this any state whose representatives are admitted by Congress is said to have a republican government. The President could declare a state government un-republican in form, but unless Congress admitted the representatives from that state to their seats a very awkward situation might arise if he should attempt to pass upon this question. During the Reconstruction period Congress established military governments in several of the Southern states, and the power to do this was said to be derived from the duty of the federal government to guarantee republican forms of government to the states. Most people would perhaps consider military government quite different from republican government as the latter term is commonly understood at the present time. At one time each of two rival factions in Rhode Island claimed to be the rightful government of that state. Each of them appealed to the President for aid in suppressing the other. One of them collapsed before its representatives came to Congress, so Congress did not have to pass upon the claims of the two governments. The President had, however, indicated his intention to come to the aid of the Charter government in case his help should be needed to suppress the Dorr faction. The Supreme Court of the United States will not attempt to pass upon the question of which of two governments in a state is the legal one, but will look to see whether Congress or the President has passed upon the question, and if either of them has done so the court will follow the decision made by them. Such questions are called *political questions* because

⁷ U. S. Const., Article IV, Section 3.

⁸ U. S. Const., Article IV, Section 4.

their final disposition rests with the political departments of the government rather than with the judicial branch.

In order to preserve the equality of the states in the United States Senate the Constitution provides that no state shall be deprived of its representation in the Senate without its own consent.⁹ This does not mean that this portion of the Constitution cannot be amended, as some have thought, but means that in order to amend the Constitution so as to change this clause the particular state whose representation in the Senate is to be changed must be among those ratifying the amendment; or, if there are several states affected, it may mean that a unanimous ratification will be required.

5. Each state to have two Senators

A sixth privilege of the states is to be free from any preference by Congress "by any regulation of commerce or revenue to the ports of one State over those of another."¹⁰ The purpose of this provision was to forbid Congress favoring one state over another commercially. Congress may favor one port over another. That is done every time Congress votes to improve the harbor of one port without at the same time improving the harbor of every other port. The commercial regulations which were sought to be prohibited were those which would prefer one state and its ports over another state.

6. Ports to be free from discrimination

Closely connected with the provision just considered is the clause which provides that vessels bound to, or from, one state shall not be obliged to enter, clear, or pay duties in another. A vessel bound from Georgia to New York may not be forced to enter, clear, or pay duties at Norfolk, Baltimore, or any other port except the one to which or from which it is proceeding.

7. Protection to vessels of each state

The state governments are immune from suit in the federal courts by virtue of the Eleventh Amendment. This means that a state may not be sued in the federal courts by a citizen of another state or of a foreign state. The amendment has been interpreted to render the state immune from suit in the federal courts which may be brought by citizens of the defendant state itself. And it should be remembered in this connection that a state can be sued in its own courts only by its own consent.

8. Immunity from suit

The founders of the present national government were very anxious that the control of foreign relations should be placed in its hands. To this end the national government was given full

States and foreign relations

⁹ U. S. Const., Article V.

¹⁰ U. S. Const., Article I, Section 9.

Restric-
tions on
states:

control of international relations by a series of express constitutional provisions. Not content with this, the framers of the Constitution included several express restrictions on the states which were designed to exclude the states from any control over this subject. These are four in number.

1. Army
or navy

The states are forbidden to keep troops or ships of war without the consent of Congress.¹¹ The power to maintain an army and navy as well as the power to declare war is given to Congress, and from the nature of the questions involved exclusive control over their settlement is centered in the national government. The states do not need an army or navy to protect themselves from one another because a judicial method of settling disputes between them was provided for in the grant of jurisdiction to the Supreme Court. Neither do the states need an army to protect themselves against foreign nations because the central government has guaranteed the states protection against foreign invasion. This restriction refers only to a regular army and navy and does not mean that the states may not maintain a state militia for the preservation of order. If for some special reason a state wishes to keep an army or navy, it may do so if it obtains the consent of Congress.

2. Declare
war

The states are further precluded from any control over foreign relations by a limitation on their power to engage in war unless they are actually invaded or are in such danger of imminent invasion that delay could not be tolerated.¹² It has been said that if such a case were to arise the "probabilities are that war would be resorted to by any of the states whether there was a provision in the Constitution authorizing it or not."

3. Letters
of marque
and
reprisal

The federal Constitution further provides that "No state shall . . . grant any letter of marque or reprisal."¹³ Letters of marque and reprisal are so closely connected with the war power that it is not surprising to find that the power to issue them is given to Congress and denied the states. A letter of marque is a commission from the government to a private individual authorizing him to take the property of a foreign state or of a citizen or subject of a foreign state as a reparation for an injury committed by the foreign state or its citizens. Coupled with this authorization is a grant of power to retake property which has been seized by a foreign state or its citizens. This latter grant is called a letter of reprisal. Since 1856 most civilized nations have refrained from issuing letters of

¹¹ U. S. Const., Article I, Section 10.

¹² *Ibid.*

¹³ *Ibid.*

marque and reprisal. The practice of thus licensing private individuals to prey on the commerce of a foreign nation was known as privateering.

The states are forbidden absolutely to make treaties.¹⁴ But they may make compacts and agreements with foreign nations if Congress consents to them. The reason for inserting these provisions in the Constitution is obvious. The framers of that instrument wanted to make certain that the states would not be able to enter into any kind of an agreement with a foreign state except with the consent of Congress.

The states may still, however, seriously embarrass the central government in its relations with foreign nations. In some instances the action or inaction of the states has led to results serious enough to constitute a cause for war, had the foreign state whose interests were involved so chosen to consider them. For example, aliens sometimes are mobbed and their property destroyed. The foreign state whose citizens have been the object of such outbreaks quite properly demands that the central government make amends and bring the offenders to justice. The central government then answers that it has no power to act in this situation and that the states alone have power to arrest, try, and punish persons committing such crimes. The complaining state is assured that the government at Washington will do its utmost to persuade the state in which the offense took place to mete out justice to the offenders. Naturally the foreign state is not satisfied with such an explanation and feels that this is a means of evading responsibility for the acts committed against the injured aliens. The states often refuse to act in such cases and in a few instances Congress has felt that the position of the federal government was so weak that it made monetary amends to the families of the unfortunate aliens. It seems that Congress has the power to provide for the trial and punishment in the federal courts of persons who commit crimes against aliens resident in the United States, but so far no action has been taken by that body to remedy this rather serious defect in our governmental system by giving the federal courts jurisdiction over this class of cases.

In some states positive legislation has been enacted which discriminates against foreigners. Sometimes the discrimination occurs in the form of denying aliens the privilege of holding land, owning land, or engaging in certain occupations. At other times it appears in the form of segregation in separate schools. As a result of such

4. Treaties with foreign states

States indirectly affect foreign relations by:

1. Failure to protect aliens

2. Discriminatory legislation

¹⁴ *Ibid.*

discrimination, complaints are made to the national government, because in many cases the foreign state feels that treaties which it has made with our country have been violated. The states have caused the central government considerable embarrassment in this way at times. On the whole, however, despite the instances given in the preceding paragraphs, the states as such have comparatively little control of, or influence on, foreign relations.

States
may not
control
currency

Before 1789, both the states and the central government had the power to issue paper money. The currency of the country was in hopeless confusion also. Many varieties of paper money and innumerable foreign coins circulated as media of exchange. When the new central government was established it was given full control over the monetary system of the United States, and to make certain that this control would not be encroached upon by the states the latter were forbidden to coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debt.¹⁵ The states have not attempted to coin money, but they have tried to circumvent the restriction on the issuance of paper money. A bill of credit is a written promise to pay a certain sum of money issued by a state on its own credit, designed to circulate as money and actually so circulating. This does not include ordinary bonds, and the states may issue them without violating the prohibition relative to bills of credit. The Supreme Court has been liberal in its interpretation of this restriction because of its desire not to restrict unduly the borrowing power of the states, and it has upheld state issues of paper whenever it was possible to regard them as purely borrowing transactions. Paper money issued by a bank, all or most of the stock of which was owned by the state government, has been allowed under the liberal interpretation of this restriction followed by the Supreme Court. It was said that such an issue was not contrary to the bill of credit restriction, because the general credit of the state was not pledged to redeem the issue. A 10-per-cent tax on state bank notes, the constitutionality of which was upheld and which resulted in driving out of circulation all state bank notes, was levied by Congress in 1866.

Bills of
credit

A state may not make anything but gold and silver coin a tender in payment of debts; but on the other hand Congress cannot force the states to accept paper money issued by the federal government in payment of state taxes if the state wishes to receive only metal

¹⁵ *Ibid.*

coin. The state may prescribe the medium in which state taxes shall be paid.

Several restrictions on the states' power of taxation are to be found in the federal Constitution. The states may not tax imports or exports without the consent of Congress.¹⁶ But the states may pass inspection laws, and taxes may be levied if they are only for the purpose of defraying the cost of carrying the laws into effect. But Congress is given the power to revise such inspection laws in order that the states may not avoid the Constitution at this point. Laws have been passed by the states governing the "form, capacity, dimensions, and weight of packages containing articles grown or produced in a state and intended for exportation." The protection of imports from state taxation extends to goods which have come to rest in the state only temporarily and are to be shipped on further before they reach their final destination, as long as they are in the original packages. The states may tax imported goods only when the original packages have been broken and the goods have lost their character as imports and have become part of the general mass of property in the state. The doctrine that goods imported into the state are thus protected from state taxation is called the *original-package doctrine*. The Constitution also provides that "The net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States," so that the motive of gain would not tempt the states to evade the prohibition on import taxes. This clause is another evidence of the determination of the framers of the Constitution that the control of foreign commerce should be within the control of Congress. The term imports refers to goods brought into a state from a foreign country and does not apply to goods brought into one state from another.

Restrictions on state tax power:

1. Import and export taxes

Original-package doctrine

The states are further prevented from interfering with interstate or foreign commerce by the prohibition on tonnage taxes.¹⁷ The internal capacity of a ship is measured by tons of one hundred cubic feet each. To tax a vessel by the ton is, therefore, to tax its capacity as a carrier, and to prevent this was the reason for the prohibition. The states may tax ships as property, but not as instrumentalities of commerce. If Congress consents to allow the states to levy tonnage taxes, the latter may do so; but in recent years Congress has rarely given this consent, although in the early years of the government such consent was given in a number of instances. Since Congress

2. Tonnage taxes

¹⁶ *Ibid.*

¹⁷ *Ibid.*

has taken over the improvement of harbors, the states have little excuse for seeking congressional permission to levy tonnage taxes.

3. Taxes
on inter-
state
commerce

The foregoing limitations upon the states' power of taxation are express, but there are several implied limitations on this power also to be found in the Constitution. The restriction of the states' power of taxation arising from congressional control of interstate commerce is an example of an implied limitation. A state may not directly burden interstate commerce by taxation. Goods or persons in the course of transportation in interstate commerce may not be taxed by the state, nor may the agencies of interstate commerce be burdened by a state tax. When property has been brought into the state and has reached its final destination it may be taxed, even though it is still kept in the original packages in which it was shipped. The original-package doctrine does not apply to goods which have been transported in interstate commerce, but is restricted to goods which have been imported from a foreign country. But the states may not discriminate against property brought in from another state by levying a heavier tax on such property than is levied on other property in the state.

The fact that property located within the state is used in doing interstate business does not of itself remove it from the state's power of taxation. Railroad cars and tracks may be taxed by the state as property, and taxes may also be levied on the earnings of railroads from business done inside the state. A railroad warehouse may be taxed the same as any other building in the state, despite the fact that it may be used only for the storage of goods which are destined to pass into interstate commerce. A factory may be taxed by the state even though its entire output is to be shipped to some other state. Manufacturing is not commerce and it is interstate *commerce* which may not be burdened by state taxes. The states are allowed to exact such inspection fees as may be necessary to cover the cost of inspecting goods or persons in interstate commerce, but the inspection must be reasonable and capable of justification under the police power of the state. The states' power of taxation is even more restricted with regard to foreign commerce than is the case with respect to interstate commerce.

4. Taxes
on federal
instrumen-
talities

Another implied limitation on the taxing power of the states is one which inheres in the very nature of the Union. It is that the constitutional activities of the federal government shall not be burdened by state taxation. Coupled with this limitation is another which prohibits the states from taxing property owned by the federal

government. If the federal government is expressly or impliedly empowered to control a certain subject or is authorized to engage in a given activity, the states may not hinder that control nor obstruct that activity by the use of their taxing power. The reason for this is clear. If the American people established a central government and gave to it certain delegated powers and reserved the rest to the states, it is hardly to be presumed that they could have intended that the states should be allowed to prevent the central government from carrying out the very powers that had been taken away from the states and given to it. Upon this reasoning is based the rule of law which prevents the states from taxing the activities of the United States mints, postal system, the granting of patent rights, and many other federal activities. For the same reason the states may not tax the interest from national bonds, because if the people who had money to invest knew that they would have to pay taxes upon the income from these bonds, they might be deterred from buying them, and the result would be that the federal government would find it difficult at times to borrow money. Land owned by the federal government is not taxable by the states, but the property of such agencies as national banks is taxable by the states because the taxation of such federal agencies' property does not burden the federal government to any appreciable extent. Agencies such as national banks are only indirectly engaged in performing services for the national government. The effect of state taxation of the property of institutions engaged only partially in the performance of federal functions is so remote that it is permitted. Congress permits the states to tax the shares of stock of national banks, but such stock may not be taxed at a greater rate than other moneyed capital in the state. But the states may not tax the notes issued by national banks because bank notes are issued to serve as currency and national banks perform a governmental function in issuing them.

The states still control the commerce which begins and ends within their borders, providing that at no time does the transportation of goods go beyond the borders of the state. The Supreme Court is constantly broadening the definition of interstate commerce and restricting that of intrastate commerce. The reason for this is the growing need for uniform commercial regulation, and the increasing volume of business which is being transacted between the people of the several states. If the transaction at any time becomes interstate in character, it is treated as having been interstate from

State
control
over
commerce

Interstate
commerce

Police
power and
interstate
commerce

the very beginning. But it should not be imagined that the states may not make any rules or regulations which may affect interstate commerce. Previous mention has been made of the fact that Congress is given the power to control commerce with foreign nations and that this control is perhaps exclusive and can be supplemented but little, if at all, by the states. But the congressional power to control interstate commerce is not exclusive. There are numerous phases of interstate commerce which have not been regulated by congressional statute. The states are allowed to regulate those phases of interstate commerce which are susceptible of local variation in treatment and do not require uniform regulation throughout the United States, provided that Congress has not covered the field by statutory enactments. For example, the states often require passenger trains to stop at towns of a certain size or of a particular character, such as county seats, and it is also common to require that towns of a certain size shall be entitled to a given number of train stops per day. If such state laws are reasonable they are valid and binding on the railroad companies even though the train involved is one that runs through several states. The states may likewise fix the speed at which trains shall be run when passing through cities, regulate the heating of cars, and may in the interest of public safety provide for the inspection of dangerous materials destined to go into interstate commerce and require that the same be properly labeled. They may also require railroad engineers to pass tests for color blindness. The states may regulate all of these phases of interstate commerce until Congress enacts a statute which conflicts with the state regulations in question; but when Congress steps in the states must step out unless the state laws do not conflict in any way with the federal laws. A difficult question sometimes arises when a purely intrastate transaction is of such a nature that it affects interstate commerce. The general rule is that Congress may not regulate intrastate commerce. That is reserved to the states. But the Supreme Court has decided that Congress may remove state regulations of intrastate commerce which are of such a nature that they discriminate against interstate commerce. Intrastate rates have occasionally been prescribed by the states which discriminate against interstate rates fixed by Congress or the Interstate Commerce Commission. In such cases Congress or the Commission has been permitted to change the intrastate rates so as to eliminate the discrimination against interstate commerce. Commerce with the Indian tribes has become relatively unimportant at the present time,

and for purposes of regulation the commerce which is carried on with our insular possessions is treated as foreign commerce and is subject to the exclusive control of Congress.

The federal Constitution contains several restrictions on state powers which protect certain rights and privileges of the individual and his property against state action. These concern (1) persons accused of crime, (2) personal freedom, (3) the right of suffrage, (4) the privileges and immunities of citizens of the United States, (5) the life, liberty, and property (including contracts) of the individual.

Both Congress and the states are forbidden to pass *ex post facto* laws.¹⁸ All *ex post facto* laws are retroactive but not all retroactive laws are *ex post facto*. As that term is now understood it relates only to criminal laws, although there is some doubt whether the framers of the Constitution intended it to be restricted to this meaning. *Ex post facto* laws are retroactive criminal laws which operate to the substantial disadvantage of persons accused of crime. If John Blank drove his automobile down a country road at the rate of fifty miles an hour in 1920 and if in 1925 the state legislature passed a law imposing a fine of twenty-five dollars upon every person convicted of having driven an automobile over thirty miles an hour on a country road since 1915, such a law would be *ex post facto* as applied to John Blank, and would be declared unconstitutional if he contested it. The same would be true if a state law imposed a greater punishment upon a person than that provided for when the act in question was alleged to have been committed. If the methods of trial are changed subsequent to the commission of a crime and such change operates to the substantial disadvantage of the accused person, it will be *ex post facto*. If the changes do not work a hardship on the accused person they are not *ex post facto* and will be allowed. Changes in the law which lessen the rigor of the punishment to be imposed are permissible and are not *ex post facto*. Retroactive civil laws are not forbidden and are constitutional.

Restrictions protecting:

1. Persons accused of crime

a. *Ex post facto* laws

The states are forbidden to pass bills of attainder.¹⁹ A bill of attainder is a legislative conviction for crime. When the punishment prescribed is less than death it is often called a bill of pains and penalties. An example of a bill of attainder is the following,²⁰

b. Bills of attainder

¹⁸ U. S. Const., Article I, Section 10. ¹⁹ *Ibid.*

²⁰ See 1 Watson, Constitution of the United States 736, where the subject of bills of attainder is discussed in detail.

"Be it therefore enacted by the General Assembly, That . . . said Josiah Philips . . . shall stand and be convicted of high treason, and shall suffer the pains of death. . . ."

Such bills had been passed by Parliament in England before the Revolution and they usually involved a deprivation of all rights of property as well as capacity to transmit or inherit property. To make certain that bills of attainder would not be passed by either Congress or the state legislatures this restriction was placed in the Constitution of the United States.

2. Personal
freedom

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." This amendment seeks to abolish slavery in whatever form it may have existed in the United States. But it did no more. It did not give the colored race the right to vote nor did it give them any other privileges which they did not have before the amendment was passed. The Thirteenth Amendment did not adjust the social rights of the white and colored races, but only abolished the system of slavery. It relates to a condition or status of slavery and not to race, color, or class.

Thirteenth
Amend-
ment

Not every form of involuntary servitude was abolished by the amendment, but only those forms that were customarily associated with slavery. Involuntary servitude as a punishment for crime is still permissible and military service is not included within the prohibitions of the amendment. Certain types of contracts are specifically enforceable by courts and some of these are personal-service contracts. Contracts of employment whereby a sailor agrees to make a voyage on a ship cannot be broken by the sailor, but must be kept until the voyage is at an end. Until recently courts would aid the officers of the ship by ordering sailors back to their duty if they had tried to escape when the ship touched at some port. The Thirteenth Amendment does not apply to this kind of involuntary servitude. A similar result is sometimes reached in contracts of singers or writers who agree to work for some person or company. If the singer or writer in question refuses to fulfill the terms of the contract and begins work for some other employer, a court of equity will order that work for the second employer shall cease. This means that the persons in question must work for the employer for whom they agreed to work or cease working altogether until the contract period has elapsed. Consequently, they will probably go

back to work for the first employer, although they do not wish to do so. The terms slavery and involuntary servitude must be understood in the light of the situation which existed when the Thirteenth Amendment was added to the Constitution. Peonage is included within the prohibitions of the amendment because it is essentially a form of slavery.

The Fifteenth Amendment forbids the states and the United States to deny to any person the right to vote because of race, color, or previous condition of servitude. This does not mean that the states may not fix any qualifications for voting, but that they may not require as a qualification for the suffrage any test which falls within the words used above. Other tests than those of color or race may still be imposed, and indeed are imposed by many states in one form or another, the most recent form being that of the educational test. The Southern states made various attempts to circumvent the Fifteenth Amendment during the years immediately following the Civil War, and not without some slight measure of success. One by one, however, the devices which were resorted to were assailed in the Supreme Court and were declared to be unconstitutional. One of the last to fall was the famous Grandfather clause which was found in the constitutions of several states. This clause gave the right to vote to all persons whose grandfathers could have voted in 1860 or some date thereabouts. Of course, the colored race could not vote, with few exceptions, at that time, and if this clause was to be strictly applied most of the colored race would have been disfranchised. The strict letter of the Fifteenth Amendment has been modified by local practice in various parts of the United States. The Supreme Court has perhaps not been so zealous in the application of the Fifteenth Amendment as it has in the case of the Fourteenth Amendment.

The Nineteenth Amendment also imposes a restriction upon the states by forbidding them to deny the right to vote to any person on the basis of sex.

In Section 2 of the Fourteenth Amendment the three-fifths rule is abolished as the basis of apportionment for representatives in the lower house of Congress. It is further provided,

"But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one

3. The
right of
suffrage

Fifteenth
Amend-
ment

Nineteenth
Amend-
ment

State
representa-
tion in
Congress
reduced

4. The
privileges
of United
States
citizenship

years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

From this it will be seen that the states may deny the right to vote to male citizens twenty-one years of age if they wish to do so, providing the denial is not on the ground of race, color, or previous condition of servitude. The Nineteenth Amendment adds another forbidden basis of discrimination—sex. But if the right to vote is denied, the state is liable to have its representation in the lower house of Congress reduced. This portion of the Constitution of the United States is perhaps violated by some state at every federal election, but no attempt is made to enforce the section. For many years the Republican party threatened to reduce the basis of representation of some of the Southern states, but nothing has ever been done in the matter. If the provision were to be strictly enforced, some of the Northern states also would be subject to a reduction in the basis of their representation.

Each person living in a state of the United States is subject to two governments, the government of the United States and the government of the state in which he lives. A person may be a citizen of a state and a citizen of the United States. The Fourteenth Amendment provides that a citizen of the United States is also a citizen of the state in which he lives by virtue of his residence therein. United States citizenship has become the more important of the two since the Civil War and little attention is now paid to state citizenship. In order to safeguard the privileges and immunities of United States citizenship, the first section of the Fourteenth Amendment provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." To go to and come from the national capital without molestation by the states is one of the privileges of United States citizenship. The rights to use the navigable waters of the United States and to have the protection of the national government when abroad in a foreign country are examples of the privileges derived from national citizenship. The privileges and immunities which a person receives because of his state citizenship will be considered in another connection,

Some of the most important safeguards to the person and property of the individual against action by the state government are to be found in the first section of the Fourteenth Amendment to the federal Constitution.

That amendment provides that no state may deprive any person of life, liberty, or property without due process of law, and also that no person shall be deprived of the equal protection of the laws. This amendment is aimed only at *state* action and does not restrain the national government. Neither does it protect an individual against action by private persons who may injure him. It is the *state* and the state alone that is forbidden to deprive a person of his life, liberty, or property without due process of law. If a group of private individuals should conspire to deprive a person of his liberty by kidnapping him and keeping him in confinement against his will the Fourteenth Amendment would not afford redress to the injured person against the offenders. But if some of the officials of the state committed such an act the person would be protected by the Fourteenth Amendment. The state and not the federal government is the proper authority to inflict punishment for injuries committed by private individuals. The state alone is intrusted with the function of keeping local peace and order.

Who is a person within the meaning of the Fourteenth Amendment? The term person is used in its broadest sense and refers to a legal person as well as a natural person, and is broader than the term citizen. Aliens as well as citizens of the United States are protected by the Fourteenth Amendment. So are corporations, for they are legal persons. The term life is also used in a very broad sense and refers not only to the bare existence of a human being, but includes much more than the right to live. The word liberty is a very vague one and the content of it is not easy to define. People do not have absolute and complete liberty, but the liberty to engage in an occupation whereby to earn a livelihood is included in the term as used in the first section of this amendment. From this it should not be inferred, however, that the states may not regulate occupations. The state may regulate and even prohibit certain occupations when their regulation or prohibition is deemed necessary for the welfare of the people. Property includes more than the mere rights which a person may have in a piece of ground or a building. It also includes the right to make contracts to sell one's services as well as contracts to sell material things.

5. Life, liberty, and property

a. Due process of law

Restrains states only

Who are persons?

Life

Liberty

Property

Due
process
and pro-
cedure

The state may deprive a person of life or liberty or property in a great number of cases providing it does so with due process of law. For example, a murderer may have to pay the penalty of death in some states for the commission of his crime. The state may take his life but must do so with due process of law. The phrase "due process of law" is of English origin and in its earlier meaning referred primarily to the method of trial which was to be provided for the settlement of criminal and civil cases. The jury was considered an indispensable part of the machinery of a fair trial. So too was the element of a fair hearing. The privilege of being confronted by one's accuser was thought to be very important. There were several elements similar to those just mentioned which were associated with a fair trial, and by custom a trial held in accordance with these requisites came to be regarded as due process of law. Due process meant fair process. In the early days people were concerned with methods of conducting trials and so it was natural that for many hundreds of years due process of law should be concerned mainly with procedure. The elements which compose due process of law at one time will be quite different from those thought necessary to constitute due process at another time. Ideas as to what is a fair trial change from one generation to the next. For many years people thought that a jury of twelve men was indispensable to a fair trial, but now the people of many states have decided that a trial by a jury of six men for petty cases is consistent with modern ideas of due process of law. Prosecution upon any information filed by the public prosecutor is now considered fair, although an indictment was thought to be necessary for several hundreds of years. Many states now permit persons to be tried for alleged crimes who have not been indicted by the grand jury. Changes in methods of trial are usually very slowly made, and properly so; but whenever the people and courts think that one of the elements formerly considered indispensable can now be dispensed with the legislature of the state may make the change.

Judicial
trial not
always
required

A judicial trial is not always required in all cases and some types of cases are seldom brought before the courts for settlement. Tax-assessment disputes are usually settled by boards. The settlement of such disputes by a nonjudicial board is considered to be in accordance with the requirements of due process of law because this has been the accepted method of settling such disputes for hundreds of years and the propriety and fairness of it have seldom

been questioned. From this it will be seen that custom and tradition are influential in determining what constitutes due process of law in any given case.

Due process of law has now come to include more than a standard of procedure, however, and is also applied to rules of substantive law. Arbitrary laws are said to violate due process. Legislatures must not pass unreasonable or oppressive laws, and if they do pass such laws they should be declared unconstitutional by the courts because they are contrary to the due process clause of the federal Constitution. The evil to be remedied, the method chosen for remedying it, the economic and social aspects of the question, are all taken into consideration in judging of the reasonableness of a law. What is reasonable in one case might not be so in another. Thus it will be seen that due process of law has become a standard of legislation as well as a standard for judicial procedure.

Due process and substantive law

The state has the power to take a person's property away from him if it wishes to use it for a governmental purpose. This power is called the power of *eminent domain*. But this power may not be exercised except on the condition that a reasonable price shall be paid for the property taken. Otherwise the seizure of the property is considered arbitrary and would be held to be contrary to the due-process clause.

Eminent domain

The due-process clause also operates as a limitation on the exercise of the police power of the state. Under its police power the state makes rules and regulations for the health, morals, and general welfare of the people. Police regulations must, however, measure up to the test of reasonableness prescribed in the due-process clause. States may pass laws providing that miners must not work more than a fixed number of hours per day, as, for example, eight or ten hours. This is not considered arbitrary, although it limits the length of time a miner may work as well as the length of time for which a mine-owner may employ him each day, because the benefits derived from such limitations on personal freedom outweigh the resulting inconveniences. If it is shown that longer hours of work are injurious to the miners and that the health of persons engaged in this type of work suffers as a result of long hours of underground work, the state may step in to protect them because by protecting them it also protects the health of their children, and thus the indirect benefit to the people of the state as a whole is sufficient to justify the law. But if the state should provide that miners could not work more than two hours each day, such a law

Police power

would be unjustified, arbitrary, and without doubt be contrary to the due-process clause. An extreme application of the police power is illustrated in the power which the state has to blow up a building which is in the path of a rapidly spreading fire in order to prevent the further spread of the conflagration. This is justified by the extreme emergency which exists. No compensation need be made to the owner of the building.

b. Equal
protection
of laws

A person is also protected against state action which denies to him the equal protection of the laws.²¹ This does not mean that all people must be treated alike. Class legislation is not forbidden by this section of the Constitution, nor, for that matter, by any other section. But such class legislation as may be passed must be reasonable and based upon some substantial difference between the classes created. A law prohibiting Irishmen from walking on the same side of the street as Englishmen would doubtless be unconstitutional on the ground that it denied to the Irishmen the equal protection of the laws. There is no good reason for separating these two groups of people in this manner. Therefore the state cannot keep them from walking together. If, however, experience had shown that the preservation of peace and order required that they must be kept separate, a law like the one referred to above would perhaps be constitutional. On this reasoning laws providing for separate coaches for different races are held to be constitutional. Farmers may be treated differently from bankers because their needs are different in many instances. If there is some reasonable basis for treating groups of people differently from others, then class legislation based upon this difference is perfectly constitutional.

Supreme
Court
and due
process

It must seem clear to the reader that the task of deciding whether a law complies with the vague requirements of due process and equal protection of the law is a very difficult one. The Supreme Court of the United States is the body to decide this question in each case wherein a state law is attacked on the ground that it violates the provisions of the first section of the Fourteenth Amendment. The court has allowed the state legislatures considerable latitude in the enactment of legislation touching matters similar to those mentioned above. But differences of opinion are almost certain to arise over the wisdom or unwisdom of many of these laws, and the judges of the Supreme Court are not without their own views on many of the questions presented in cases involving them, nor should they be. The court sometimes decides that a given statute is

²¹U. S. Const., Amendment XIV, Section 1.

unconstitutional because it feels that the law is arbitrary and unreasonable and for that reason is contrary to the due-process clause. The views of the justices on such questions as the reasonableness of a statute will quite naturally be affected by their age, training, and previous experience. On the whole, however, the United States Supreme Court has been conservative, although it has not been as conservative as many people would seem to believe. Any prolonged demand for social or economic legislation will be likely to result in a gradual change in the attitude of the justices toward the question of what constitutes due process of law and equal protection of the laws in that particular connection, and the legislation desired will eventually be upheld, although it may previously have been declared unconstitutional.

"No State shall . . . pass any . . . law impairing the obligation of contracts."²² This provision of the national Constitution was inserted for the protection of creditors because of early colonial and state laws.²³ All sorts of contracts except marriage are included within this clause. Marriage is a contract, but the legal incidents and results of it have always been fixed by the state and not by the wishes and intentions of the parties to the agreement.

c. Obliga-
tion of
contracts

The contract itself is not protected, but the *obligation* of the contract is. What is meant by the obligation of a contract? It is the legal obligation under which people are placed who have become parties to a certain type of agreement, an agreement which the rules of law recognize and enforce. Agreements of this type are called contracts. It is the compulsion feature of a contract which is intended to be protected. The obligation is largely concerned with the remedy for enforcing the contract. If the remedy is entirely taken away, the obligation of the contract has been impaired. If contracts are broken, legal remedies are available to the injured party. These remedies are protected by this clause of the Constitution. But not every change of remedy constitutes an impairment of the obligation of the contract. It is not always easy to tell whether a particular change in remedy falls within the protection of the so-called "contract clause." For example, suppose Smith makes a contract with Jones whereby Jones promises to pay to Smith a certain sum of money. The legal relation of debtor-creditor then

Concerns
remedies

²² U. S. Const., Article I, Section 10.

²³ Laws designed to hinder and prevent creditors from bringing suit in the courts to collect debts were not uncommon in the earlier years of the history of state government.

exists between Jones and Smith. Under the rules of law which are applicable to this agreement and which fix the rights of the parties to it, let us suppose that one of the remedies which Smith has against Jones is to have the latter put in a debtors' prison for failure to pay Smith the money due him. Let us suppose further that Smith may also sue Jones in a court of law if Jones should fail to perform the contract. Smith then has two remedies. Suppose next that the state legislature passes a law abolishing imprisonment for debt. Would not that seem to deprive Smith of one of his remedies against Jones? It would seem so. But Smith would still have an adequate remedy left. He can still sue Jones as before. To have Jones thrown into jail would be a punishment to Jones, but would perhaps not aid Smith in getting his money. To make this change in remedies would not result in substantial injury to Smith, and only substantial deprivations of remedies are prohibited by the contract clause. The Supreme Court has had to decide in each case whether the particular change in remedy which was involved constituted enough of an impairment in the obligation of the contract as to make it unconstitutional. This has often been a difficult task.

Charters
are
contracts

Not only may the state not impair the obligation of contracts between individuals, but it may not impair the obligation of contracts between the state and an individual. If the state issues a charter to a group of people and authorizes them to form a corporation, that charter is a contract between the state and the corporation and may not later be impaired by the passage of state laws calculated to violate the terms of the charter. The reason for this is that the Supreme Court held in a famous case, *Dartmouth College v. Woodward*,²⁴ that corporate charters were to be considered on the same plane as private contracts for purposes of applying the contract clause of the Constitution. Most states now provide either in their general laws or in their constitutions that all corporate charters shall be issued subject to the power of the state to change them by later legislation in case that seems desirable. Then these laws are read into each charter by implication, even though they are not repeated in the charter word for word. In this way the effect of the *Dartmouth College* case has been minimized to a large extent. The Supreme Court has also decided that there are some types of contracts to which a state may be a party which do not bind the states completely, as would be the case if the state was a private party. For example: (1) the states may not limit their power of

Exceptions

²⁴ (1819) 4 Wheaton 518.

eminent domain by contract. (2) The state may not alienate its police power. Illustrations of this rule are the power of the state to make a law forbidding the manufacture of alcoholic beverages or to prohibit the conduct of lotteries, although the state may have previously granted a franchise to a person or corporation to conduct these businesses.

It should also be remembered that contracts entered into by individuals with one another are made subject to the police power of the state. Suppose John Blank agrees with Richard Roe that the latter shall buy from the former one thousand barrels of beer during the coming year. In the middle of the year the state legislature meets and passes a law prohibiting the buying and selling of liquor in the state. Does this law impair the obligation of this agreement? Yes, it does, but not unconstitutionally so, because such contracts are made subject to change by reasonable state laws, although they may result in nullifying the effect of the contract. In this case Roe would not be compelled to purchase the remaining five hundred barrels of beer from Blank and the latter could not sue Roe for failing to do so. There are some exceptions to the general rule that private contracts are made subject to future exercises of the police power, but for present purposes these exceptions need not be noted here.

Contracts
and police
power

The truth of the maxim that the only justification for a revolution is its success is well illustrated in Section 4 of the Fourteenth Amendment,

Miscellaneous
restrictions

"The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

Rebellion
debts

The Southern states were not to be allowed to question the debt which the Northern states had incurred in preventing the seceding states from leaving the Union. On the other hand, the Southerners were to lose not only their slaves, representing several millions of dollars, but also whatever money they might have loaned to the Confederate government. This section also had the effect of repudiating Confederate debts to citizens of foreign countries.

No title of nobility may be granted by any state. The federal government is likewise forbidden to grant such titles. Of this provision it has been said that "It was the purpose of the people of the United States to establish a democracy, and to guard against the abuses of English Monarchy supported by a privileged nobility."²⁵

National-
state
coöpera-
tion

It must not be supposed, however, that all of the relations of the states to the Union can be reduced to legal rules. There are many formal and informal relations between the federal and state governments which are necessary because of the nature of the work that each of them has to perform. If the states were to adhere strictly to their every right and were to refuse to coöperate with the federal government except in the cases in which such coöperation is required by the Constitution, the work of government would be carried on in an awkward and clumsy manner. An example of the need of such coöperation on the part of both governments is to be found in the control of the slavery traffic in the period preceding the Civil War. The central government and some of the states were at odds over the policy to be followed and the result is well known to every student of American history. It may be that the laxity of the enforcement of the prohibition policy of the United States in some sections of the country is due in part to a similar lack of coöperation between the states and the federal government. It is not suggested here that prohibition is or is not a desirable policy, but only to stress the need for coöperation between the governments of the states and the United States if this particular policy is to be enforced in an effective manner. The national government has established a meat-inspection service under its control of interstate commerce, and the states naturally benefit from this service. Coöperation has been established in the promotion of agricultural education, the control of plant diseases, the quarantine of cattle, and a number of other instances. Another instance of state coöperation with the federal government is to be found in the administration of the selective-draft law during the recent World War. The governors of the states voluntarily carried much of the burden of administering the draft policy by supervising the organization of local draft boards in accordance with the general directions of the President of the United States.

Federal
subsidies
to states

The federal government also coöperates with the states by means of subsidies to certain undertakings which are carried on by the

²⁵ Burdick, *The Law and Custom of the American Constitution*, p. 442.

state governments.²⁶ Sometimes the federal government uses this as a means of bringing the work of the states up to certain standards by denying the grants of aid to those states which do not meet the requirements fixed by the central government. Another benefit of these subsidies is that uniformity of action by the states is obtained or at least encouraged with regard to those subjects which concern all of the states. The building of roads is one of the best known of the activities of the states which have been aided by grants of money to the state government. Aid for the purpose of maternity and infancy hygiene was also granted by a federal law in 1921. In recent years more than one hundred millions of dollars have been given annually by the federal government to the states in the form of subsidies. There is, of course, a danger in the extravagant use of subsidies in that it may tend to make the states too dependent upon the central government and to destroy state initiative in these lines of activity. Advocates of federal subsidies for state activities sometimes forget that the money thus received by the states must come from taxes paid by the people. There are benefits and disadvantages in the subsidy system and it is as yet in the experimental stage.

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²⁶ See *Massachusetts v. Mellon* (1923), 262 U. S. 447. Also 14 *National Municipal Review*, p. 692.

CHAPTER THREE

INTERSTATE RELATIONS

Union is
of states
with
diverse
interests

THUS FAR we have been considering the relations of the states to the central government. But it is obvious that in a Union which includes forty-eight different states there will be many points of contact among the several states. Their interests are not the same on all subjects, nor are the states always in agreement on the course of action to be followed with regard to a particular activity which concerns them collectively. Some states are very large territorially, while others are very wealthy in natural resources. The coast states are not always confronted by the same current problems that confront the inland states. Neither do the states have an equal amount of influence in the central government. Populous states have more votes in the House of Representatives at Washington than do those having a small number of people. Only in the Senate are they equal in voting power. But the states are legally equal as members of the Union in that all of them have certain fixed rights and privileges because of their membership in the Union. These are the same for all states, whether they be large or small, wealthy or poor.

Disputes
between
states

That disputes between the states of the Union would arise was to be expected, and the task of providing a method of settling these disputes caused the framers of the present Constitution no little difficulty. Finally, the Supreme Court of the United States was given original jurisdiction over cases involving controversies between states. This jurisdiction has been made exclusive in the Supreme Court by congressional statute. Many of the controversies between states which have been settled in the Supreme Court of the United States have been concerned with boundary disputes. That the Supreme Court had jurisdiction over boundary disputes between states was settled by that court in the case of *Rhode Island v. Massachusetts* in 1838.¹ But not all suits between states have involved disputes over boundary lines. Sometimes one state sues another because the first state claims that the second owes it a sum

Boundary
disputes

¹ 12 Peters 657.

of money. This usually happens when the plaintiff state has become the owner of bonds or other securities issued by the defendant state. If the plaintiff is the real owner of the bond, it can recover the money due from the state which issued the bond by means of a suit against the latter in the Supreme Court. But the court will look into the case rather closely to make sure that some citizen has not procured the plaintiff state to sue for his benefit on a claim which he holds against the defendant. If the court thinks that the plaintiff state is only trying to collect a claim for one of its citizens, the suit will be thrown out of court. The reason for this is that a citizen of one state is not allowed to sue another state in the federal courts.² If the court allowed the citizen to turn over his claim to his state and then permitted the state to sue on it and recover the money, only to be handed over to the citizen, the restriction upon the right of the citizen to sue a state would be virtually nullified. The Eleventh Amendment to the federal Constitution cannot be evaded in that way. But if the plaintiff state is the real owner of the bond, the Supreme Court will proceed to hear the case on its merits.

State
debts

One of the most interesting disputes between two states to be settled by the Supreme Court was that of *Virginia v. West Virginia*. Virginia claimed that West Virginia should pay a portion of the debt of Virginia as it stood at the time of the admission of West Virginia to the Union because the latter had received a part of the benefit of the money spent in incurring the debt. The Supreme Court of the United States agreed with this contention. West Virginia was finally ordered to pay the sum demanded, and after some delay took proper measures to raise the money needed to pay the amount of the judgment rendered by the Supreme Court against it. If West Virginia had refused to pay the judgment, a very awkward situation would have arisen, although the Supreme Court said that methods would probably be devised to force the state to pay it in case of such refusal. It is not likely that a state will refuse to abide by a decree of the Supreme Court which has been rendered in a litigated case. The people of the United States would disapprove of such action, and quite properly so. Thus far, most states have acquiesced in the decision of the court in disputes to which they have been parties.

Virginia
v. West
Virginia

One other class of cases should also be mentioned in this connection. They are the cases in which one state has sued another to protect the citizens of the plaintiff state from conduct on the part

Parens
Patriæ
doctrine

² U. S. Const., Amendment XI.

of the other which is injurious to them. Thus if state X empties sewage into a river which flows into state Y to the damage of the citizens of the latter state, Y can go to the Supreme Court to have this objectionable practice stopped. So, too, if state X dams up the water in a river which runs into state Y so that the river goes dry and the people in state Y who live along the river suffer from this drought, state Y can bring a suit against state X in the Supreme Court to stop it from holding back the water in the river. The doctrine which allows one state to sue another in behalf of its citizens collectively is called the *parens patriæ* doctrine.

Interstate
relations
in U. S.
Constitu-
tion

There are to be found in the Constitution a few explicit rules governing interstate relations. It was thought best to treat of a few of these relations in that document because of their importance to the continued success of the new Union which had been established. The fact that some of the relations between the states under the Articles of Confederation had not been very harmonious, and the fact that considerable embarrassment had resulted to the efficiency of government, caused the relations which are hereinafter considered to be taken care of by constitutional provision. In a federal system of government it is not only necessary to mark off the territorial division of powers between the central government and the states, but it is also important to fix certain relations which are to exist between the territorial divisions themselves. Particularly is this true when the territorial divisions are in existence prior to the formation of the central government, as was the case with the states in this country.

Full-faith-
and-credit
clause

In Article IV, Section 1, of the federal Constitution it is provided that,

“Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”

Applies
only to
civil laws

The full-faith-and-credit clause does not apply to the criminal laws of a state, and no state is required to aid another state in the enforcement of its criminal laws, except as it may indirectly do so through extradition. The clause is restricted to the public acts, records, and judicial proceedings of the states. Congress has prescribed the method of authenticating public acts and records, and when they are duly authenticated in the manner prescribed they are evidence

of laws, or of claims which have been settled by the courts of some other state or territory.

The phrase "public acts" refers to the public statutes passed by a state legislature. To make sure that the states would recognize the statutes of other states when properly authenticated, the full-faith-and-credit clause was inserted into the Constitution. The courts of Massachusetts must recognize the validity and binding character of a Wisconsin statute upon any subject which may arise in the Massachusetts courts, the settlement of which depends upon the laws of Wisconsin. The public records mentioned in this section include such records as mortgages and deeds which are recorded in some public office. A deed which is properly drawn up and recorded in Kentucky will be binding in an action which may be brought in the courts of Maine regarding any matter which may involve that deed. If two witnesses are required in Maine, and Kentucky requires only one, and there is only one witness to the deed, that will be considered sufficient in Maine also. The law of the place where a deed or contract is executed is the law that governs its validity and meaning. The same is true of a will made in Ohio, where the number of witnesses required is different from that required in Indiana. If the Ohio law has been complied with, the courts of Indiana must give effect to the will, although the requirements of the Indiana laws are different in this matter.

Public
acts

Public
records

The full-faith-and-credit clause also extends to judicial proceedings. If Smith sues Jones in Georgia and wins the case, he is said to get a judgment against Jones. Now suppose Jones moves out of the state of Georgia before Smith can stop him or attach his goods. Jones moves to Rhode Island and Smith finds out that he lives within that state. Smith can come to Rhode Island with a certified copy of the judgment which was given by the Georgia court and the Rhode Island courts will recognize the validity of the judgment and give Smith relief upon it without again trying the merits of the case. The only defense which Jones could advance in the Rhode Island courts would be that the Georgia court did not have jurisdiction over the subject matter of the case or that he had not been properly served with notice of the suit in Georgia. If the suit is against the property, the court of a state gets jurisdiction if the property is located within the state. But usually if the suit is against the person, some notice must be given to him personally that a suit is being started against him in order that he may have an opportunity to prepare a defense to the suit. If the state court

Judicial
proceed-
ings

has tried the case without having jurisdiction over the person or the property, the judgment of the court in such a case need not be honored by the courts of any other state. The fact that judgment was obtained on an obligation which arose out of a transaction which another state will not recognize does not justify that other state in denying full faith and credit to the judgment. For example, a judgment may have been given upon a gambling debt in one state. The rule in another state might be that a judgment could not be given in suits to collect such debts. But that would not justify the second state in refusing to give recognition to the judgment granted on a gambling debt in the first state.

Marriage
and
divorce

Marriage and divorce cases have caused a great deal of trouble and confusion under the full-faith-and-credit clause. Each state has control over the marriage and divorce of persons domiciled within its own territory. But the difficulty arises in deciding when a person is *domiciled* in a state and when he is not. It has been said that the power of a state to grant divorces cannot be taken away from it by the fact that the husband or wife of a resident of the state has moved away from the state. But if the husband and wife are both nonresidents, the state has no power to grant a divorce through its courts. The objectionable feature about the divorce cases is that a husband can be divorced from his wife in one state, but in another state he will be considered as still married to her. The reason for this is that some states do not recognize divorces granted in other states, because they do not meet the requirements of jurisdiction and domicile which are thought necessary to give the decree of divorce full force and effect in the latter states under the full-faith-and-credit clause. Some states recognize these divorces, although they need not do so. Of course, if all the requirements of the full-faith-and-credit clause as to jurisdiction have been complied with, all the states must recognize the decree of divorce. The differences in the requirements of grounds for divorce, methods of serving notice on the defendant, and definitions of domicile and jurisdiction are the causes of the shameful confusion in the divorce laws of the various states and promote evasion of the law governing this subject rather than obedience to it. Congress should have been given the power to regulate marriage and divorce in order that uniform regulation of these subjects might be obtained throughout the United States.

Interstate
rendition
of persons
accused
of crime

In Article IV, Section 2, of the Constitution of the United States the following provision is found,

"A person charged in any state with treason, felony, or other crime who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

The process by which a person who has committed a crime in one state is delivered over to that state by the officers of another in which the accused person may be found is called extradition. Provision for extradition of criminals between countries is made in treaties of extradition. The extradition of criminals by states within the United States should perhaps be called interstate rendition, but popular usage has applied the term extradition to both the international and interstate processes.

This provision was necessary to the efficient enforcement of the criminal law of the various states of the Union and is perhaps more necessary now than it was when the Constitution was framed.

Congress has passed several statutes in execution of this section of the Constitution, and although the Constitution does not provide for the extradition of a criminal to any of the territories of the United States, Congress has enacted that criminals shall be turned over by and to the territorial governments in the same manner as is followed by the states. Congress has also outlined the procedure which is to be followed in the extradition of criminals to the demanding state. The Act of Congress has placed upon the governor of the state or territory the duty of arresting and delivering the criminal whose extradition is sought.

If X commits a crime in the state of Kentucky and flees to Nebraska before he is apprehended in Kentucky, X is said to be a fugitive from justice. It is not necessary, however, in order to be considered a fugitive from justice, that X actually ran away from Kentucky, for if X is found in Nebraska when he has been charged with a crime in Kentucky he is considered a fugitive within the meaning of the extradition clause. If the Kentucky authorities learn that X is in Nebraska they will probably notify the authorities of that state, that X is wanted in Kentucky and that they should arrest him and hold him until the proper proceedings can be instituted for extraditing him. The next step for the Kentucky authorities to make would be to have X charged with the crime which he is alleged to have committed. This would usually be by indictment by a grand jury. An information by the prosecuting attorney is

Steps in
interstate
extradition

not sufficient to satisfy the constitutional phrase "charge with . . . crime." The local authorities in Kentucky would then ask the governor of Kentucky to request the governor of Nebraska to turn X over to an officer whom Kentucky will send to receive him. The governor of Kentucky will then send such a request to the governor of Nebraska, and will inclose a copy of the papers charging X with the crime, specifying the nature of the crime, the place and time of its commission, and such other details as may be necessary.

The governor of Nebraska will examine the papers which have been sent to him, or will ask the advice of the attorney-general of Nebraska in the matter, and decide whether he thinks that X should be extradited to Kentucky. The governor must decide this for himself and his decision of the case is final. If the governor refuses to send X back to Kentucky, there is no way to compel him to do so. It may be that he thinks that X would not get a fair trial if he were sent back and this may cause him to refuse to turn X over to the Kentucky officer. Or he may feel that such a long time has elapsed since the crime was committed that it would not be in the interests of justice to send X back for trial.³ If the governor should decide for any reason not to surrender X there would be no legal way for that state or the federal government to compel the governor of Nebraska to return X to Kentucky. But unless there was some very good reason for refusing the return of X, the governor of Nebraska would probably order that X be arrested and turned over to the Kentucky authorities. If X insisted that there was a good reason why he should not be returned, the governor would probably set a date for a hearing of the argument which X wished to make against extradition. If the governor was not satisfied that X had stated any sufficient reason why he should not be extradited, he would be handed over to the officer. A statute passed by Congress provides that the expenses of the arrest and transportation of fugitives from justice are to be paid by the demanding state, and also stipulates that unless an officer is sent to receive the accused person within six months, he shall be discharged. The states have in many cases passed laws governing the arrest and detention of fugitives from justice, and such laws are valid as long as they do not conflict with congressional laws which have been passed upon the same subject.

³ For examples see the documents in Mott, *Materials Illustrative of American Government*, p. 47, and Beard, *Readings in American Government and Politics*, p. 148.

The federal and state courts can inquire through a writ of *habeas corpus* whether the arrest and detention of a person sought to be extradited is in conformity with the Constitution and laws of Congress. Before a person can be extradited it must be shown that he is substantially charged with a crime against the laws of the demanding state and that he is a fugitive from justice. The first of these is a question of law and is decided by the courts, and the second is a question of fact which the governor must decide in the first instance. But if it clearly appears that the person is not a fugitive from justice, the courts will discharge him, although the governor has ordered his return.

In the case considered before, if the governor of Nebraska had refused to order the return of X to Kentucky, a group of Kentucky citizens or a couple of Kentucky officers might secretly journey to Nebraska, waylay X, and rush him off in an automobile to Kentucky. If they were not caught before they reached Kentucky, X would be liable to trial in that state just as though he had been legally returned. Of course, the people who kidnapped X in Nebraska would be guilty of the crime of kidnapping in that state, but the governor of Kentucky would very likely refuse to turn these persons over to Nebraska for that crime in view of the fact that Nebraska had just refused to extradite X to Kentucky. State laws and the law of Congress make such kidnapping criminal, but once inside Kentucky X could nevertheless be put on trial. It should be remembered, however, that in the great majority of cases the governor of the state extradites the accused person without any hesitation. This is necessary if each state is going to receive proper consideration for its demands for the return of criminals who have gone into other states. Next time it might be Nebraska that wanted a man returned to it from Kentucky.

When the person has been returned to the demanding state he can be tried for the offense with which he was charged, as well as for any other offenses which he may have committed. In extradition between nations this rule does not apply, for in international extradition a person can only be tried for the particular crime with which he was charged when extradited. In an extradition proceeding the merits of the case which the demanding state has against the accused person are not settled. The only question which is investigated is whether he has been properly charged with the crime for which he is sought to be extradited. No question of the guilt of the party is entered into by the state from which the person is demanded.

Privileges
of citizens
of the
states

The protection that is accorded to the privileges and immunities of United States citizenship has been considered in Chapter II. But there are other privileges and immunities which a person may have because of his state citizenship, and for the protection of these the framers of the Constitution included a statement that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several states."⁴ A state is hereby forbidden to discriminate against citizens of other states as compared with its own citizens. The citizens of one state are to be treated on the same terms as the citizens of every other state who may be residing in any particular state. Thus Minnesota must not discriminate against the citizens of Iowa as compared with the treatment accorded the citizens of Wisconsin. Usually there is little difficulty about this case, but some interesting cases have arisen over the treatment by one state of its own citizens as compared with its treatment of citizens of another state.

In the first place the question might be asked, who are included within the term *citizens* as it is used here? The answer is that only natural persons, not artificial ones, are included. For this reason corporations are not citizens of a state within this clause of the Constitution. The states may discriminate against foreign corporations which do business within the state and treat them differently from domestic corporations.⁵ Of course, the state may not place prohibitory restrictions upon foreign corporations engaged in business transactions in interstate commerce, nor may the state so arbitrarily discriminate against foreign corporations as to deny them due process of law. But the state may nevertheless impose many restrictions upon foreign corporations which are not imposed upon domestic corporations.

Privileges
protected

What are the privileges and immunities of state citizenship which are protected by this clause? The Supreme Court has never given any comprehensive enumeration or definition of them. But several of those included are now known. One right of state citizenship is the freedom to enter the state for purposes of trade. Another is the right to sue in the courts of the state. The state of New York may, however, require that citizens of Arizona who wish to bring suit in the courts of New York must post a bond to guarantee the payment

⁴ U. S. Const., Article IV, Section 1.

⁵ Corporations incorporated in a state are called domestic. All others are usually referred to as "foreign" whether organized in another state or in a foreign country.

of court costs, although citizens of New York are not required to post such a bond. Another privilege of state citizenship is that of being taxed at the same rate as other owners of property in the state, and that this rate shall not be higher for property owned by citizens of other states than it is for property owned by citizens of the taxing state, assuming the property to be in the same class. The privilege of acquiring property in another state is also a privilege which attaches to state citizenship.

This clause of the federal Constitution does not mean that a person can take with him all the rights which he or she has in one state and force the state to which he moves to recognize them. The state of California may fix the requirements which a person who wishes to practice medicine in that state must meet. A person who has the right to practice medicine in some other state may not go to California and practice medicine without California's permission. The right to practice medicine in Nevada does not give that person the right to practice medicine in California. The same is true of lawyers. Under the police power the states may still regulate professions, and fix requirements for those who engage in them. Some years ago women were allowed to vote in only a few states of the Union. A woman who lived and voted in the state of Missouri could not move into the state of Minnesota where women were not given the right to vote at that time and force the state of Minnesota to allow her to vote there. Political privileges are not included within the privileges and immunities of state citizenship. For this reason a state may require that newcomers must reside in the state for six months or a year before they shall be allowed to vote.

Neither do the privileges and immunities of state citizenship entitle a nonresident to share in the public property of a state. The oysters and fish in the bays, streams, or lakes of a state belong to the citizens of the state collectively, and the state may take measures to preserve them for the exclusive use of citizens of the state. For this reason many states have nonresident hunting license laws which impose much higher fees for nonresident licenses than are charged for resident licenses. Such discrimination is allowed because the state can exclude nonresidents altogether from hunting if it wishes to do so, and if the state can do that it can prescribe the terms on which the privilege which it does grant may be exercised. But the state may not require a ten-dollar license fee of a nonresident from one state and a fifteen-dollar license fee from a citizen of a

different state. If the citizen of one outside state is allowed to hunt, so must the citizens of all the states be allowed to hunt on the same terms.

Treaties
between
states

The states are absolutely forbidden to enter into any treaty, alliance, or confederation. It makes no difference whether the treaty or alliance is with a foreign state or with another member state of the Union. Both are forbidden.⁶ For this reason the Confederacy of the Southern states in 1861 was a violation of the Constitution of the United States.

Interstate
compacts

The states may, however, enter into compacts or agreements with one another if Congress consents to them. If the agreement is of a political nature Congress must agree to it or it is invalid. The consent of Congress may be given before or after the agreement is made. But this limitation on the power of the states to make agreements with one another is directed against political agreements only and the states are allowed to enter into nonpolitical agreements without the consent of Congress. Congress must decide in the final instance whether an agreement is of political or nonpolitical nature. If the state of Washington owned a piece of land in Oregon and Oregon wanted to buy the land from Washington, an agreement might be made between the two states for the purchase and sale of the land without the consent of Congress. The reason why this could be done is that such an agreement would not be of a political nature nor would it disturb the political balance of the Union. So, too, if Missouri and Illinois had a mutual boundary line which was not well defined, they could arrange to have the true line surveyed without the consent of Congress to the arrangement. If the boundary line between the two states was to be changed, the consent of Congress might be necessary because a change in the territorial extent of a state might have a political effect, such as, for example, a change in population which might result in a different number of representatives in the lower house of Congress from one of the states. Another example of a nonpolitical arrangement between states would be an arrangement to drain a marshy area which extended into the territory of two adjoining states. Such an area might be the cause of a local disease and the states would be allowed to coöperate in the eradication of the disease and its causes without consulting Congress.

The suggestion has been made recently that the states should use their power to make compacts with one another to attain uniformity

⁶ U. S. Const., Article I, Section 10.

of practice and policy on various subjects. There can be no doubt that the states might make greater use of this power than they have done hitherto, but there are obvious objections to its extensive use.

The number of interstate relations which are regulated by the federal Constitution is comparatively small. There has been a growing demand in recent years that the states should coöperate formally and informally to a greater extent than they have done in the past or than is required by any legal standard such as may be written down in a constitution. It has been urged that if the states are to meet adequately many of the problems concerning a variety of subjects and activities, they must take some steps to treat these problems uniformly so far as that may be possible. Only by efficient coöperative state action can the tendency to increase the power of the central government be halted.

Informal
coöperation
of states

The increased demands for uniformity of regulation of many commercial activities has led the states to adopt a number of uniform laws governing certain phases of commerce. The states first appointed members to a Commission on Uniform State Laws in 1892. Annual meetings of this commission have been held since that time. The committees of this body are engaged in framing model laws on such topics as the commission may decide should be treated by uniform legislation in all of the states. These proposed laws are discussed at length in the meetings of the commission and finally are introduced into the legislatures of the different states. In a few instances nearly all of the state legislatures have adopted laws proposed by the commission. The Negotiable Instruments Law and the Uniform Sales Act are illustrations of laws which have been proposed by the commission and quite widely adopted. Other laws have been proposed which have not been so widely adopted. The work of the commission proceeds slowly, but the results of its work are not at all negligible. It has proposed some excellent laws, a number of which are gradually being adopted by an increasing number of state legislatures. The Uniform Declaratory Judgments Act is one of the more recent proposals of the commission and it is being adopted by a considerable number of states. The farther removed from commercial topics these proposals stray, however, the more difficult it will be for the commission to persuade state legislatures to adopt the model laws which it drafts.

Uniform
state
laws

President Roosevelt called a conference of governors in 1908 which many people believed to be the beginning of a series of meetings which would result in great things for state government in this

Governors'
conference

country. The attendance and interest in these conferences has been dwindling in recent years and no very material beneficial result seems to have come out of the movement thus far. Some benefits were doubtless derived from the meetings and from the interchange of ideas and experiences of those present. But the meetings are too infrequent to contribute much that is really helpful to the governors in their routine work of administering the government of a state. No permanent organization was established. A bureau for disseminating information among the governors on the activities of the various states in administrative or legislative matters might well have been established. The governors' conference seems to have degenerated into an annual social meeting of the chief executives of a few of the states. But some indirect benefits may come from such a meeting and it may be that in the future the institution will take on a new usefulness. One obvious limitation on the possible effectiveness of the conference is the short terms for which the governors of many states hold office and the failure of many of them to obtain reelection.

In addition to the conference of governors, there are periodic meetings of the various administrative officers of the state governments. For example, the attorneys-general get together at the annual meeting of the American Bar Association. The state food and dairy commissioners, highway inspectors, and insurance and banking commissioners and several other groups also hold annual or biennial conferences.

The results of meetings of governors and administrative officers of the states must of necessity be rather intangible and unsatisfactory as long as governors do not have the power to initiate legislation. But if at any time the governor should be given any real power of initiating legislation, these conferences should bear real fruit, because then the exchange of information and experience in working out problems of state administration may affect the course of action taken by the several states. For this reason these periodic meetings should be encouraged and continued.

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CHAPTER FOUR

CONSTITUTIONS

Nature
of a
consti-
tution

A CONSTITUTION is not a piece of paper. No more striking illustration of the tendency to objectify conceptions can be found than the tendency to associate the idea of a constitution with a written document. To many people in this country the word constitution means a certain formal writing. But all would agree that constitutions would still exist even though every printed copy of these formal documents were totally destroyed by some accident. And most of us would also admit, perhaps, that constitutions might still exist even though the art of writing were to be lost. What, then, is a constitution? It is the group of principles and rules in accordance with which governments are established and operated. These principles may or may not be recorded in a document, and when they are for the most part written out in a connected and systematic way, in popular speech we call the document itself a constitution. We say then that we have a written constitution, meaning, of course, that we have a written record of these principles and rules. When none or few of these principles and rules have been recorded in writing it is customary to say that we have an unwritten constitution. There is no hard and fast line which separates written from unwritten constitutions. None of the states of the United States, nor even the national government, have entirely written records of their constitutions. In the case of the national constitution as well as of the state constitutions there are important and unimportant portions which are unwritten, in the sense of a formal writing.

A student of the government of almost any state will find that there are certain practices and principles followed in the conduct of the state government that are not found recorded in any written document. They are sometimes supplementary to the provisions of a written document, and at other times they are directly contrary to the terms of the written instrument, rendering those written provisions a dead letter and in a very true sense modifying the written record as effectively as though it had been formally amended and

the record left complete and accurate. It is not so very important, after all, whether the record of the constitution be written out in great detail or whether only the more important parts be written. The first method, of writing them out in detail, is that used in the states of the United States, while the second method is that used in England, and to a little lesser degree in the national government of the United States. In no case is it possible to have the written record entirely complete for any great length of time. The reason for this is that the rules and principles are constantly changing.

One factor which has perhaps contributed much to the present tendency to view the constitution as the written record of the principles which are followed in the conduct of the government is the idea that the courts enforce only the written constitution. It is true that courts usually enforce only that portion of the constitution which is written, and they are often careful to call attention to that fact. This has doubtless caused many people to think of the written portion of the constitution as the enforceable portion. But courts do sometimes enforce unwritten parts of constitutions. Judges have at times declared laws passed by the legislature to be unconstitutional even though they were not contrary to any particular clause of the written record of the constitution. Laws are sometimes held to be contrary to the *spirit* of the constitution, and the courts have declared that there are certain fundamental rights guaranteed to every person by the principles of free government wherever government is found, and that legislatures may not violate these rights. The judges are doubtless thinking of certain unwritten principles of government which they consider as sacred and enforceable as though they were reduced to writing.

A constitution to be successful must be stable and flexible. Both characteristics must be present if constitutions are to serve their purposes well. Unless the group of principles and rules which govern the operation of the government is somewhat stable, the government's relation to the individual, the relations of one part of the government to another part, and many other important political and legal relations, cannot be known to any degree of certainty. As a consequence progress will be seriously impeded. Artistic, political, social, and economic development can only take place when there is peace and order within the state. The relations which depend upon the activity of the government must be quite definitely known and fixed, so that people can rely on their continuance for some time if a real advance in civilization is to be made.

Constitutions must be stable

Must
also be
flexible

The constitution must also be flexible. If the rules and principles of government were never changed, government would become an intolerable burden and strait-jacket upon society. Changes must be made in these rules and principles in order that the government may function effectively under different circumstances and changed conditions. It is clear upon the slightest reflection that this is so.

How, then, are these two necessary characteristics of any successful constitution to be reconciled? The proper balancing of these two factors in a constitution is a difficult task. That they be properly balanced is extremely important. One method of insuring their balance is properly to draft the constitution. The written record, if there is to be one (and there is one in every state), should deal only with the fundamentals of government and its functions. Only the fundamental inter-governmental relations should be included, and only the fundamental relations between the government and the individual should be cast into a somewhat permanent form. The constitution should be very short and phrased in terms which are precise without being impossible of elaboration by the process of interpretation. A second method is to provide a suitable method or methods for changing the constitution. The constitution should be amendable. It should be possible to amend the constitution so as to vary the principles and rules which are to be applied in a given period of time in order that the people of that time may be well governed according to the needs and standards of their particular day. Provision should be made for changing portions of the constitution and also for a revision of the entire set of principles and rules governing the conduct of government. When we come to examine the state constitutions we will test them by these general considerations which experience has shown to be applicable to any constitution anywhere and at any time.

Formulation
of
consti-
tutions

The formulation of a constitution is an act of sovereignty. In an autocratic government where sovereignty rests with the single ruler the constitution is created by act of the ruler. In an oligarchy the group of rulers formulates the constitution, while in a popular government the people formulate the rules and principles to which they wish the government to conform, because in a popular government the people are possessed of the powers of sovereignty. This sovereign power of establishing and changing governments and the principles governing their conduct is called a *constituent* power. The people in the states have delegated a portion of their constituent

power to the state legislatures in so far as they allow the legislatures to participate in the amending of constitutions, while, on the other hand, they have granted some of the constituent power to conventions selected for the purpose of revising the constitution. But the people have usually reserved some of the constituent power to themselves, for the voters must generally ratify the proposals of legislatures or conventions in amending or revising the constitution. When the legislature participates in the work of amending the constitution it is said to be exercising a different power than when it passes ordinary laws which are rules of conduct for private individuals, or which create governmental machinery and direct its operation. This last type of power we call legislative power. In fact, as will be further explained later in the chapter on state legislatures, the constituent and legislative powers are essentially alike; but because of reasons of policy the making of ordinary laws is given to the legislature while the making of the more fundamental law or the constitution is exercised in part by the people. The distinction which has been thought to exist between the constituent and legislative power has been practically effaced in those states where the popular initiative and referendum are used for purposes of ordinary legislation, for in those states the people make ordinary laws exactly as they amend the constitution, except for a few minor procedural differences.

The states have full power to make and change their own constitutions subject to such restrictions as may be found in the federal constitution. The state constitution is the highest law of the state and it ranks above the statutes passed by the state legislature and ordinances passed by cities within the state. The courts will enforce the limitations of the state constitution wherever these come into conflict with the statutes or ordinances in the state. But the state constitution is subject to the Constitution of the United States, and whenever it contains any provision contrary to the latter, the state and federal courts will declare the state constitutional provision in question invalid.

The provincial assemblies which had come into power in most of the states at the outbreak of the Revolution were the bodies which established the first state governments and formulated the first state constitutions. These assemblies either formulated a constitution themselves or called a convention to formulate one, but in most cases the constitution which was formulated was not submitted to the people for approval. Between 1776 and 1780 all of the states

First state
constitu-
tions

had adopted constitutions, and some of them had experimented with several in that four-year period. The Massachusetts constitution of 1780 was the first one to be ratified by the voters.

How
made

The first state constitutions reflected the conditions which preceded their formulation. Constitutions are not formulated entirely anew at any one time, but usually embody the results of past experience and practice in government. The first state constitutions were modeled after the colonial charters of Rhode Island and Connecticut to a very large extent. These two colonial charters were in turn patterned after the corporate charters which were issued to commercial trading corporations in the sixteenth and seventeenth centuries. These early mercantile companies gradually lost their commercial aspects in the American colonies, but even though they later became essentially political ventures, many of the features of the trading company organization were retained. The framework of government which was established in accordance with these early state constitutions was essentially that which had been used in the earlier mercantile companies which had originally founded the American colonies. By adding a preamble, a bill of rights, and making a few re-arrangements in the distribution of governmental powers these colonial charters became state constitutions. The modifications which were made in the colonial charters were largely due to colonial experience, English governmental practice, and the current political thinking of the eighteenth century.

Character-
istics of
early
constitu-
tions

These early state constitutions are marked by a number of characteristics which have exerted a profound influence upon state government and state constitutions to the present time.

1. Brief

1. The early state constitutions were very brief, ranging in most instances from five to sixteen pages in length. In this respect we shall see that modern state constitutions have departed widely from the earlier ones.

2. Consent
of gov-
erned or
popular
sovereignty

2. All of the constitutions contained express statements of the belief that the consent of the governed was the basis of all governmental authority. This general statement was considerably qualified in actual practice, however. Popular sovereignty was either expressed or implicit in all of the early constitutions. The belief was firmly cherished that the people had the right to make and change constitutions and governments at will.

3. Re-
stricted
suffrage

3. In the face of this profession of the doctrine of popular sovereignty all of the state constitutions contained provisions limiting the right of suffrage and of office-holding to persons meeting either prop-

erty or tax-paying qualifications on the one hand, or religious qualifications on the other. In most of the states a larger property or tax-paying qualification was imposed upon the right to hold office than upon the right to vote, and the higher the office the higher the qualification which must be met. In a few states Catholics and Jews were excluded from the franchise, while in others belief in God or the Christian religion was required for voting or office holding. "The consent of the governed" was not interpreted too literally but was restricted to a rather small group out of the total population.]

4. The supremacy of law was a theory which underlay all of the first state constitutions. This doctrine was interpreted to mean that every man should be under the law and should have the protection of the law, particularly that he should be punished only for acts which were contrary to law. But the doctrine also meant that governmental officials were to be subject to law and that the government was to be one of laws and not of men. Included in this idea of the supremacy of law was also the idea that there was a higher law than that of the legislature, namely the law of the constitution, and that this higher law of the constitution should be enforced by the courts. Back of all this was the belief that there was a law of nature upon which all human law must rest if it was to be just and permanent. This law of nature was to be invoked against governments that became tyrannical, and this higher natural law gave to the people the right to depose tyrannical government from its position of authority.

4. Supremacy of law

5. According to the writings of Montesquieu, the French political writer, the ideal government was one of three departments with the powers of government apportioned among them. The founders of the first state governments believed that there should be some distribution of the powers of government among the three departments, but thought that the legislative branch should receive the greater share of these powers. Because of this belief the early state governments were governments of legislative supremacy, instead of having the powers of government equally divided between the three departments. But the early constitutions did contain statements to the effect that no one department should exercise all the powers of government, and even the first state governments which were marked by legislative supremacy did observe to some extent the doctrine of the separation of powers. The doctrine of the checks and balances of power did not obtain in the first state constitutions,

5. Separation of powers

but developed later when legislative supremacy gave way to an equalization of the powers of government between the three departments. The check and balance feature of state government consisted in the giving of some of the powers which logically belonged to one department to some other department in order that the second department might check the first one. Thus, for example, the power of veto is a legislative power, and it was given to the governor in order that he might check the legislature. Of course the doctrine of the separation of powers itself also involved a certain amount of check and balance by dividing the powers of government among the different departments.

6. Weak executive

6. The executive branch of the state government was entirely subordinated to the legislative branch and in several instances the governor was chosen by the legislature. The reason for the reduction of the status of the governor is to be found in the experiences which the colonists had had with the colonial governors and in the current belief in the efficacy of popularly elected representative bodies as instruments of government.

7. Short ballot

7. The early state governments were established in conformity with the principle of the short ballot. In no case did the people vote for more than a very few officers, often less than half a dozen in all.

8. No provision for amendment

8. Several of the early constitutions contained no provision for their amendment and most of the others contained unsatisfactory methods of amendment. This did not, however, restrain many of the legislatures from changing the constitutions when they thought change necessary.

Constitutions growing longer

There has been an ever-increasing tendency toward longer constitutions in the development of state government. The constitutions which have been framed in the last quarter of a century are five and six times as long as those framed in the period 1776-80.¹ There are at least four reasons for this growth in the length of state constitutions.

Causes

First. There was a growing distrust of the legislature. This has manifested itself in three ways. (a) An ever-increasing number of restrictions has been imposed upon the substantive power of the legislature. The many restrictions upon legislative control of state finance illustrate this point. (b) Subjects have been more fully dealt with in the constitution because of the fear that the legislature would not act properly with regard to them. Constitutional provisions dealing

1. Distrust of legislature

¹ Compare the constitutions in the Appendix.

with current industrial and social problems furnish familiar examples. Finally, (c) numerous procedural limitations have been imposed on state legislatures.

Second. Changing conditions bring forth new problems of government and new evils to be remedied. In order that these may be dealt with adequately by the state government it is necessary to give to the legislature new powers and at the same time to impose additional restrictions upon the liberty and property of the individual. Most of the recent regulatory social and economic legislation requires the surrender of a certain amount of freedom by some of the affected groups. The effect of a judicial decision limiting the power of the legislature in its attempt to meet new problems is sometimes to cause the passage of a constitutional amendment authorizing the legislature to pass laws dealing with the particular problem involved.

2. Need
for new
powers

Third. The need for additional governmental machinery has resulted in the creation of various boards and commissions. In a number of recently formulated constitutions these boards have been provided for in the body of the constitution. Public utility and corporation commissions are sometimes provided for in modern state constitutions and furnish illustrations of this tendency.

3. Need
for more
govern-
mental
machinery

Fourth. The growing tendency is to insert into the constitution more provisions dealing with the administrative details of state government. The provisions regulating the letting of contracts and the performance of public work are examples of this tendency. Earlier state constitutions contained nothing on such subjects as these.

4. Admin-
istrative
provisions

Several criticisms have been made of this tendency to make constitutions so long. 1. One of the objections advanced by many against long constitutions is that they tend to break down the distinction between the constituent and legislative functions. This is assumed to be an objectionable tendency *per se*. But there is no distinction inherent in the nature of those functions which makes it possible to divide all the legislative from the constituent functions. The line of division between matters which should be handled by the legislature and those which should be treated in the constitution is at best a very indistinct one. There are some matters which would clearly fall in one class or the other, but in many cases the two functions tend to merge and the line of separation becomes somewhat arbitrary. The question whether a particular subject should be left to the legislature or not resolves itself largely into a matter of policy. And when the question of policy is used as the test, a great number

Criticisms
of long
constitu-
tions

of considerations enter into the answer which should be given to this question.

2. Another objectionable result of long constitutions is that measures of temporary importance are put into permanent form. This tends to tie the hands of the legislature. It is true that the constitutions are often comparatively easy to amend but there are still several states in which this is not true; and, furthermore, the ease with which constitutions may be amended cannot be entirely measured by a consideration of the mechanical devices whereby amendment can be made. There is a tendency for the people to be much slower to amend the constitution than for the legislatures to alter and repeal ordinary laws.

3. Perhaps the most serious criticism which can be made of long constitutions is that they need to be changed often, and that in changing them the people are called upon to participate in the work of government too often. The people refuse to take an active interest in the routine changes in the constitution which are rendered necessary by changed conditions. Only on real controversial matters, and particularly those involving some change in a fundamental policy of the government, do they become thoroughly interested and well informed. Few of the many changes which are continually being made in the constitutions of the several states are of this nature, and consequently the people are unable and unwilling to perform the task which is thus imposed upon them. The busy life of the average citizen does not leave him time in which to fit himself for such an active participation in the changing of the constitution of his state.

4. By a judicial doctrine which treats the inclusion in the constitution of any subject as an indication that the framers of the constitution meant that the legislature should not regulate any phase of that subject, the hands of the legislature have been further tied. This doctrine of implied limitations has been developed as a result of lengthy and detailed constitutions. The courts have so often seen the framers of constitutions attempt to curb legislative powers that they have come to treat any mention of a subject in the constitution as an implied exclusion of legislative regulation of that subject.

5. Still another objection to lengthy constitutions is that they throw a heavy burden on the courts. The more restrictions there are upon the powers of the legislature the more often acts of the legislature will be challenged in the courts. Much of the current criticism of the courts can be traced to this source.

The contents of most state constitutions can be divided into five

parts. 1. The preamble. This is a statement of the reasons which impelled the creation of the constitution, and a general statement of its purpose. The preamble to the federal Constitution is often copied with few or no modifications in the state constitutions which were adopted subsequent to 1787.

2. The bill of rights. This portion of state constitutions will be dealt with more in detail presently.

3. Body of the constitution. This contains sections outlining the framework of the three departments of government, and the powers of each, and the relation which each bears to the other. The officers of state government, their duties, the method of their election, and sometimes even their compensation are often provided for in other sections of the main body of the constitution. The provisions on the suffrage are also to be found here. Several sections on state finances, debt limits, taxation, corporations, industrial relations, and business organization are likely to be found in succession, with varying degrees of detail depending upon the date at which the constitution was formulated. These subjects will be treated at length in several succeeding chapters.

4. The amending clause. This clause will be treated more fully somewhat later in this chapter.

5. The schedule. This provides the time, method, and place of inaugurating the new government which is to be established, and such temporary arrangements as are thought necessary.

There seem to be at least three methods whereby individual rights may be guaranteed against governmental invasion. 1. The method followed in England to a considerable extent is by custom and tradition, although even there some of the rights of Englishmen are enumerated in formal written documents. But it lies within the power of Parliament to change these guaranties at any time, and the people must rely on tradition and public opinion to keep Parliament from invading these rights. 2. The rights of the individual may be safeguarded by a broad general guaranty in the written constitution with power reserved to the government to specify them and to modify and change them as the need for change or modification arises. This is the method followed in Switzerland. 3. The constitution may contain a specific and detailed enumeration of the particular rights which are to be beyond governmental control. The bills of rights in state constitutions are examples of the use of this method. There is an obvious advantage in having the

Contents
of state
constitution

1. Pre-
amble

2. Bill of
rights

3. Body
of con-
stitution

4. The
amending
clause

5. The
schedule

Methods
of safe-
guarding
individual
rights

1. By
custom

2. General
constitu-
tional
provision

3. Specific
enumera-
tion

rights of the individual enumerated because they are then quite well known, and because of this it is believed that they will not be violated so often. There is, however, an equally obvious disadvantage in this method because when it has become desirable to modify a particular right the hands of the government are tied until the constitution is amended. The process of amendment by which these lists of rights may be changed is often very difficult. It is almost impossible to make an exhaustive enumeration of the rights of the individual which should be protected against governmental invasion, and it is equally difficult to make sure that only fundamental rights are included in the enumeration. Political ideas and conditions change so that what is deemed a fundamental right to-day is not deemed to be so to-morrow. Detailed enumeration of private rights is especially appropriate when new types of government are being established and are in the experimental stages of development. Present American bills of rights had their origin under such circumstances.

Contents
of bills
of rights

1. Political
theory

Many of the bills of rights, particularly the older ones, contain rather elaborate and general statements of political theory. These statements reflect the influence of the French and English philosophers of the eighteenth century and usually consist of somewhat vague generalities concerning the relation of government to the individual. High-sounding statements of the theory of popular sovereignty that the power of all government rests for its authority upon the consent of the governed, the declaration that justice and the law shall be equal for all, as well as many other similar doctrines, abound in the constitutions which were framed in the earlier years of our history; and such pronouncements were still a powerful force in the middle period of the last century when many of the existing state constitutions were formulated. The doctrine of the natural and inalienable rights of man received considerable attention and many of these rights were enumerated at length. The traditional Anglo-Saxon doctrine that the military authority should be subordinate to the civil authority was also formulated in these early bills of rights. Montesquieu, Locke, Paine, and Jefferson are still important influences in state government.

2. Specific
rights

Following these broad and sweeping statements of the doctrine of natural rights is usually an enumeration of the specific rights which are protected from governmental invasion. The rights which are commonly enumerated are those which were the subject of the long fight between Englishmen and their monarchs. The memory of

those struggles and the spirit of the Declaration of Independence were still strong in the minds of the framers of the first constitutions, and the formulators of later constitutions have either approved enthusiastically of the earlier enumerations, or copied them *in toto* without much reconsideration of their validity or usefulness. The early American state constitutions included a bill of rights, and to include a bill of rights is now an American tradition. Some of the more important particular rights commonly found in bills of rights will now be considered.

There are to be found in most state constitutions a considerable number of provisions protecting persons accused of crime. These provisions were included in the earlier constitutions because at that time the protection of the individual from arbitrary and cruel treatment by the government was believed to be a problem to be reckoned with. The experiences of the colonists and of Englishmen at home had brought to the minds of the founders of our state governments the necessity of curbing the government in these matters. For it must be remembered that government to them was visualized in the image of one person or a small group of persons and not in the image of popular control.

Thus we find statements that no cruel and unusual punishments shall be visited upon persons accused of crime; that reasonable bail shall be available to such persons; that the accused shall be confronted with his accusers and be privileged to call witnesses in his own behalf, and that he shall be informed of the cause of his detention. Further provisions deal with the form of the accusation, the mode of trial, the nature of evidence which shall be admitted, and sometimes the treatment of witnesses. Provisions forbidding bills of attainder and *ex post facto* laws are very common also. There is considerable variation in the constitutions as to the manner in which these different subjects are treated, but there is a tendency everywhere to specify in detail many of the requirements and rules which must be observed by the state government in the conduct of criminal trials and in treating criminals in general.

Such provisions were all very useful in the day of their formulation, but it may well be questioned whether they are not at present serious obstacles to an enlightened and effective policy on the part of the state in handling the grave social problem of crime. With the growth of crime to a major occupation on the part of the American people, it is questionable whether we should not seek to protect society as well as those accused of crime. State constitutions must

(a) Protection to persons accused of crime

be a source of considerable encouragement to the modern criminal. Certainly many of the provisions in present bills of rights regarding the administration of criminal justice tend to insure delay and miscarriage of justice in a great number of cases. The public seems to be very anxious that a criminal be apprehended, but once apprehended he is accorded every possible favor in the attempt of the government to deal effectively with him as an anti-social being. There is not now much real danger of cruel and unusual punishments, nor of too hasty trial of persons accused of crime. Most of the really necessary protections to persons accused of crime are to be found in the federal Constitution, and the great majority of the protections found in state constitutions are either duplicates of them or else they are impediments to any effective administration of justice. The observer of the administration of criminal justice has cause to wonder at times whether the protections which are most needed to insure a fair trial of the criminal are not disregarded sometimes while the technical and minor protections are unduly stressed. Some of the protections of persons accused of crime should doubtless be retained, but many of them could well be eliminated.

One change which might be of some aid in the situation now existing in the administration of the criminal law, as it is affected by these sections of the bills of rights, would be to deny the benefit of them to persons accused of serious crime. Much of the opposition to changing bills of rights would disappear if only the more serious offenders were to be denied the privileges now surrounding most criminals. Most of the people who are brought to court now are petty criminals, violators of laws which create offenses where none existed at common law: traffic law violators and the like. These persons do not usually claim the benefits of the bills of rights, and if they claim them no particular harm is done anyway, so that they can well be humored in the matter. For example, a person accused of murder might be denied the privilege of obtaining his freedom by giving bail in the interest of protecting society, while petty thieves and traffic-law violators might well be allowed to give bail. It is the person accused of serious crime who usually insists on his constitutional privilege of being set free on bail until the date fixed for his trial. These petty offenders have little sympathy for the hardened criminal or the person who has committed some serious offense, such as arson, murder, or some sexual crime. The general public is not so interested in the protection which is to be afforded to persons accused of these more serious crimes.

The average man does not plan on ever being involved in such a crime, and therefore he figures that he will never need the benefit of these protections for such offenses. In this way the door might be opened to a modification of the present insurmountable obstacles which exist to the speedy and intelligent enforcement of the criminal law in the more serious cases.

Furthermore, the details of the administration of the criminal law should be left for the most part to legislative regulation. If popular representative government is at all successful, the state legislature should certainly be intrusted with these matters of criminal procedure which are now so often treated by constitutional provision. There seems little warrant for fearing that there will be a return to the arbitrary and cruel criminal law of several hundred years ago. In view of this fact, the many details of the constitutions at this point should for the most part be eliminated and those few which should be retained consolidated into a very few brief statements.

There are always several sections of the bill of rights which deal with the freedom of religious belief to be accorded the individual. In most state constitutions there is to be found a statement that the individual shall be free to worship according to the dictates of his own conscience, or provisions to that effect. Then there are also other provisions looking to the separation of church and state, and forbidding the state to appropriate money to the benefit of any church or religious society. Here, however, may often be included qualifying clauses which allow the state to place the dependents and sick in charitable religious institutions and to make compensation for the same. Religious property is sometimes exempted from state or local taxation by constitutional provision. The privileges and rights which religious societies are to enjoy are also specified in this connection. Some statements concerning the relation of religious belief to the competency of witnesses and to the taking of oaths are likewise found in this portion of bills of rights.

(b) Free-
dom of
religion

A number of state constitutions contain statements which are somewhat at variance with the spirit of the more general phrases on religious liberty mentioned above. For example, the constitutions of Massachusetts and Vermont both admonish the people of their respective states to worship God and be just, industrious, and frugal in all things, in order that the welfare of the commonwealth may be promoted. Others urge the people to be good Christians and to assemble regularly and at stated times for divine worship. A few states have also inserted provisions dealing with the reading

of the Bible in schools. The same observations which were made concerning the sections of bills of rights dealing with criminal procedure might be made of the religious sections just noted. Some of them might be eliminated altogether, while those which are really useful could be condensed into a few brief sections. Many of the religious sections now to be found in bills of rights are very vague and are often repetitious.

(c) Free-
dom of
speech and
press

Another group of clauses in ancient and modern bills of rights deals with the freedom of speech and the press. The right freely to assemble and petition is often included in these sections. The right of freedom of speech is subjected to two limitations in many instances, and where this is not expressly done it has been accomplished by judicial interpretation and implication. The first of these is in the rules governing actions for slander and libel. No person is allowed to plead the right of freedom of speech in an action for slander or libel. The sections on freedom of speech were directed toward preserving the freedom of expression by the individual on questions of governmental policy and were not intended to abrogate the long-established rules of torts governing the relations between private individuals. A second limitation which is applied in practice is that the right of free speech in war time is not so broad as in peace time. A person may say things in peace time which are only considered fair criticism and comment, but if he says the same things in war time they may hinder seriously the prosecution of the war or tend to obstruct the carrying out of the war policies of the government. This limitation is one arising out of the rigorous and extra-legal conditions of war.

(d) Prop-
erty
rights

The rights of property are usually protected in a number of sections which provide that unreasonable searches and seizures shall be forbidden; that troops shall not be quartered in the homes of the citizens in time of peace, and that private property may be taken only for a public purpose, and that if property is so taken it shall be taken only on condition that just compensation be paid therefor. The privileges of immunity from searches and seizures were the subject of much controversy in the later colonial period, and English invasion of them caused the framers of the first state constitutions to insert these safeguards. The application of the prohibition law and its incident searching of private houses, automobiles and baggage, as well as the person of the individual, have brought these provisions into the limelight again in recent years.

The problem of the admissibility of illegally obtained evidence is closely connected with this same subject.

The power of the state to take the property of an individual away from him for some public purpose is called eminent domain. Just compensation must be made for the property when it is taken. Many technical rules of law have been developed to determine what is just compensation and what is property, and what constitutes a taking. These provisions are designed to safeguard the individual from arbitrary seizure of his property by the government without payment being made for it. They may now be unnecessary in state constitutions because the same object has been reached under the clause of the Fourteenth Amendment dealing with due process of law. The state courts are confronted with the same problems in this connection that were mentioned in connection with the Supreme Court of the United States and the due-process clause of the Fourteenth Amendment in an earlier chapter.

The idea is quite current that the bills of rights in state constitutions have become mere rhetorical flourishes, and that at most they do no harm even though they may not accomplish the positive good which they did in earlier years. But this is an erroneous view because the bills of rights of to-day constitute one of the greatest impediments to adequate legislative treatment of many modern social and economic problems to be found in the entire constitution of most states. The provisions of the bill of rights dealing with personal liberty are not often a serious obstacle to the inauguration of any particular public policy on the part of the legislature. The phrases concerning the freedom of speech and the freedom of religion found in most constitutions are rather lightly set aside by the courts through the medium of interpretation, and public sentiment often countenances and even demands that such be the case. But the provisions which protect property rights are not so readily set aside by the courts. A study of the judicial application of the various provisions of bills of rights would doubtless reveal that those provisions which protect the property rights of the individual have been applied with much more severity to acts of the legislature than have those which deal with personal liberty. The clauses dealing with the taking of property for a public use without just compensation and the requirement of due process of law have been applied by the courts to defeat any number of well-meant statutes which have been enacted by the legislature under the police power of the state. These clauses are now applied to safeguard the minority against

Importance of bills of rights

any action by the majority which seems arbitrary, unreasonable and unwise to the courts.

Bills of
rights and
public
opinion

Aside from the criticism of specific provisions made in the foregoing paragraphs, there is considerable diversity of opinion as to whether the bills of rights as they exist in present state constitutions are desirable or not. The doctrine of the inherent rights of man is now pretty well exploded and is not subscribed to by most students of government. The fact must be recognized, however, that whatever the theory of students and philosophers may be, there are still many people who instinctively cling to this doctrine of natural rights and the rights of man. The idea that there are certain sacred rights which no government may take away is by no means eradicated from popular political thinking. The fact that the particular rights which may be claimed as sacred may vary from time to time and that rights once considered sacred are at other times ruthlessly infringed without arousing opposition, does not seem to affect the continuing adherence of many people to the doctrine of natural rights. The doctrine represents not a logical, but an emotional, reaction upon the part of the individual toward governmental regulation of private conduct and property. Popular distrust of government still continues to be very strong, and whenever any group of people is subjected to a new rule of conduct by the majority through legislative action, the doctrine of natural rights is resorted to as the basis for resisting the attempted regulation. There are still many people who resist the prohibition policy of the federal and state governments on the ground that the prohibition amendment and the Volstead Act constitute an invasion of "personal liberty." However pressing may be the needs of efficiency in government, these needs must in their minds still remain subordinate to the superior force of the doctrine of individualism. The courts are not free from this idea either, and every now and then judicial expression of the theory is encountered. It may be that as long as legislatures are the object of such popular distrust as now prevails with regard to them, the bills of rights perform some useful purpose, for it is not to be forgotten that state legislatures are still bodies with residual powers.

Suggested
changes in
bills of
rights

Many of the provisions in the bills of rights as they now exist do not serve any useful purpose. Perhaps as many as two-thirds of the provisions commonly found in the bills of rights might be eliminated without any loss to the people of the state, even admitting the full force of the most individualistic view of government in

this respect. In the *first* place, all the provisions which are so vague that they are not applicable to any particular situation might well be eliminated. The portion of bills of rights discussed under the first division of their contents above would thus be abolished. Some of the clauses on religious freedom would also be stricken from the constitutions by this suggestion. They serve no practical purpose, are often confusing, and tend to perpetuate the already too prevalent emotional approach to the study of government. In the *second* place, all of those provisions of the bills of rights which duplicate the provisions of Article I, Section 8, of the federal Constitution, the Fourteenth Amendment, or other provisions found in the federal Constitution which restrict the action of the states against the individual, should be abolished. They are not only useless but are positively harmful. They are harmful because there are forty-nine courts construing identical provisions in almost as many different ways. It is true that many of these cases finally reach the United States Supreme Court and that this tends to establish uniformity of interpretation and application; but there are many cases which do not reach the federal Supreme Court and which involve questions which are answered in a great variety of ways by the several state courts. A glance at the cases involving equal protection of the laws, due process of law, eminent domain, and *ex post facto* laws will suffice to show that many variant rules are in force with regard to them in the courts of the United States and of the several states.

In the *third* place, those provisions which are not enforced because of popular inertia, or, on the other hand, because of determined popular opposition, should be eliminated. The violation of some constitutional provisions by illegal arrests and the use of third-degree methods fall in this class. To have provisions in the written constitution at direct variance with the principles actually applied and customarily approved by the people tends to destroy one of the supposed advantages of a written constitution and certainly tends to heighten the disrespect for law.

There is doubtless still some need for a short bill of rights, but the provisions of such a bill should be brief, and not too narrowly phrased. The provisions which are needed should be selected because they embody some policy which the people wish to include in their fundamental law for some time to come. When constitutions are reformulated there is a tendency to copy whole groups of sections without any analysis of their effect upon the work of

government. The musical sound of phrases often serves to take the place of analytical political thought.

Recent
modifica-
tions in
bills of
rights

There has been a slight tendency in recent years to modify in minor details some of the provisions of the earlier bills of rights. For example, several states now provide that truth shall be a defense in a suit for libel, that the unanimous verdict of a jury shall not be necessary in minor criminal cases, nor need the jury be a twelve-man jury for minor offenses. The legislature is forbidden ever to suspend the writ of habeas corpus, and in some cases martial law is also banned. There has been a tendency, illustrated by the Oklahoma constitution, to add some powers to the state government which would previously have been thought to encroach upon the prerogatives of individuals. Thus the right to engage in commercial activities, excluding agriculture, is granted to the state of Oklahoma. Monopolies are sometimes forbidden because they are deemed injurious to the community. These latter provisions are not to be classified strictly as typical bill-of-rights provisions, but are usually inserted at that point in the written constitution of the state; and they do modify the conception prevalent in most of the sections of the bills of rights regarding the relation of the government to persons and their property. These recent modifications are not sweeping, nor do they alter in any material respect either the fundamental spirit or many of the specific provisions of existing bills of rights.

Changing
of consti-
tutions

The necessity for flexibility in a successful constitution has been touched upon previously. The problem of keeping state constitutions flexible is rendered doubly important at the present time because of their undue length. Early state constitutions were short but rigid, whereas many of the constitutions of to-day are long and rigid, thus failing to use either of the two methods whereby the characteristics of flexibility and stability may be properly balanced. Many, though not all, of the objectionable results of long constitutions can be obviated by an effective provision for amending the constitution.

Methods
of change:
1. By cus-
tom

There are at least four ways of changing constitutions.

2. By
statutory
elabora-
tion

By custom and usage. The written record of the constitution often fails to reveal what actually takes place in the process of government because usage and custom have in effect modified the written phrases, or, at least in many cases, supplemented them.

By statutory elaboration. The creation of much of the modern machinery of administration in state government has resulted in changing portions of the constitution through legislative interpre-

tation and application. The changing views as to the functions of government are clearly reflected by this method.

By judicial interpretation. Almost every state constitution has been modified or elaborated by this process.

By formal amendment.

Of the four processes whereby constitutions may be changed, the fourth has hitherto been the only one considered in any detail in studying state constitutions. But all four methods are continually being used in almost all of the states. The fact that we have never paid any attention to the first three methods of changing constitutions and that the changes which they effect are not often recorded in the written document which we call the constitution, has no doubt contributed much to the prevalent tendency to think of the constitution as the written record. This has doubtless helped to perpetuate the idea that a constitution is a sort of sacred thing and that proposals of change in it are almost sacrilegious. When we come to a consideration of the fourth method, we find that there are three ways of formally amending constitutions in current use in the states. The first method is to amend the constitution by a legislative proposal of the amendment and a popular ratification of the proposal by the voters. The second method used is to let the people of the state sign a petition initiating an amendment and to submit this proposal to the voters for approval. This method is one application of the device called the initiative and referendum. These two methods are commonly used to change single portions of the constitution and are seldom used to make any widespread fundamental change in it. The third method of changing constitutions by formal means is by use of the constitutional convention. The convention is used only when a series of fundamental changes are contemplated and when the essential features of the governmental system are to be modified. When the change of the constitution is a relatively minor one, the process whereby that change is accomplished is called amendment; but when the changes are numerous and of a rather fundamental character and to be made at one time, the process whereby this is accomplished is called a revision. Of course, it should be remembered that even in the case of a revision there are whole portions of the old constitution which are retained intact in the new constitution. For the amendment of a constitution the two methods of legislative proposal with popular ratification, and the initiative and referendum are used. For the revision of state constitutions the constitutional

3. By
judicial
interpre-
tation

4. By for-
mal
amend-
ment

convention is used. Each of these methods will now be considered in detail.

Legisla-
tive
proposal

The first of these methods, that of legislative proposal and ratification by popular vote, is the oldest and still the most widely used of any of the existing methods of changing state constitutions. Some of the early constitutions omitted the popular ratification feature of the amending process and tried to distinguish the process of amendment from that of enacting ordinary legislation by requiring that proposed amendments should be passed by two succeeding legislatures. Another method of maintaining this distinction between legislation and constitutional amendment was to require an extraordinary majority vote in the legislature to propose an amendment. The tendency to dispense with the approval of the second legislature and to substitute for it the vote of the people grew in favor until now only sixteen states require two legislatures to participate in the amending process. The tendency is to allow amendments to the constitution by proposal by one legislature and ratification by popular vote.

Every state constitution can now be amended by legislative proposal and popular ratification, with the exception of Delaware and New Hampshire. In Delaware the constitution is amended by the action of two successive legislatures without any popular vote whatever, and in New Hampshire the constitution can be changed only by a constitutional convention. In South Carolina and Mississippi the constitution is amended by a proposal of one legislature, followed by popular ratification, and subsequent adoption by a second legislature. The majority of legislative votes required to propose an amendment varies in the different states. In nineteen a bare majority vote of the legislature is sufficient to propose an amendment, while in seventeen states a two-thirds vote is required. Seven states require a three-fifths vote of the legislature for proposing an amendment.

Various limitations exist in some of the states which make it impossible to amend an article of the constitution more than once in five, six, or ten years, or which forbid the amendment of more than one article at any one session of the legislature.

Ratifica-
tion of
proposed
amend-
ment

The majority of votes required in the different states for ratification of the proposed amendments by the people varies considerably. The states can be divided into three groups based on the number of votes required. (1) Two states require a majority vote of the *electors* of the state. The constitution of Indiana would seem to contain

a provision placing it in this group, but the Indiana Supreme Court has decided that "electors" means only those voting in the election. This makes it exceedingly difficult to amend the constitution because it is a very rare thing for all the people voting at an election to vote on a proposed amendment, and it is even more rare for all the electors in the state to vote in any one election. (2) Ten states require that a majority of those voting at the election must approve the amendment in order that it be ratified. This requirement is not quite so severe as the one just considered, because only those voting at the election are counted in the total, instead of all the electors, whether they voted in the election or not, and only a majority of those voting is required for ratification. But this is nevertheless a very high requirement because many more people vote for candidates than vote on proposed amendments. Candidates always arouse more enthusiasm than do abstract propositions of government such as are contained in many of the proposed amendments. It happens that proposed amendments are often defeated in these states which require a majority of all the votes cast at the election even when more people actually vote in favor of the amendment than against it. But everyone who fails to vote on the amendment really votes against it in the states where this majority is required. (3) Almost three-fourths of the states allow proposed amendments to be ratified by a majority of those voting on the question. Rhode Island requires three-fifths and New Hampshire requires two-thirds of the vote cast on the question to ratify proposed amendments.

The second method of amending state constitutions is by the initiative and referendum. Thirteen states now make use of the initiative to propose amendments to the state constitution. Beginning with Oregon, in 1902, the initiative as an instrument for proposing amendments to constitutions spread quite rapidly to a dozen states in the west and south. Massachusetts is thus far the only eastern state which has introduced the device, and it was introduced there in a somewhat modified form.

The initiative and referendum

The procedure which is followed in the constitutional initiative is usually much similar to that prescribed for the initiation of statutes.² The initiative petition must usually be signed by from eight to fifteen per cent of the voters who participated at the last election. In North Dakota a fixed number of signers is required—20,000—and in Massachusetts 25,000 is required. The tendency

²The referendum as applied to ordinary legislation will be treated in detail in the chapter on the state legislature.

is to require a larger number of signers for the constitutional initiative petitions than for the petitions initiating statutory proposals. In order to make certain that the demand for the amendment is not entirely local to one section of the state, some states require that the signers be distributed in different sections of the state. Missouri requires the signers to be from two-thirds of the congressional districts of the state; Ohio requires that one-half the percentage come from over one-half the counties of the state, while Nebraska provides that five per cent must be in two-fifths of the counties of the state.

The general practice is that when the requisite number of signers has been procured, the petition is filed with the secretary of state and is submitted to the voters at the next election. A few states vary from this procedure. In Massachusetts and Michigan the proposed amendment is sent to the legislature and the legislature has the option of submitting an amendment competing with the initiated one. In Massachusetts the initiated amendment must receive the approval of one-fourth of the elected members of the successive joint meetings of the legislature. The theory which underlies the submission of the initiated amendment to the legislature before it is submitted to the people is that this would tend to prevent ill-considered and too hasty amendment of the constitution, and also that the legislature might be able to improve upon the amendment proposed in the initiative petition.

Most of the states require that a majority of the votes cast on the question shall be sufficient to ratify the amendment; but in a few instances the additional requirement is imposed that the majority must constitute a certain fixed number or a fixed percentage of the votes cast at the election. The constitutional initiative supplements the convention and proposal by the legislature as methods of changing state constitutions. It came as one of several items in the wave of demand for increased popular participation in government which swept over the country at the opening of the present century. The constitutional initiative has much more in its favor than the initiative for ordinary statutory purposes. The making and changing of constitutions is a constituent function, and if the constitutional initiative is used only as a supplemental method of amending the constitution, it may serve a useful purpose. The greatest use which it will serve is perhaps that of a potential agency for changing the constitution whereby to insure the response of the legislature to a popular demand for amendments. The initiative in constitutional

amendment may also supplement the convention, for it is possible that the convention as well as the legislature will reflect any inequality in representation which exists in the state government as between rural and city groups. The constitutional initiative makes it possible to amend the constitution on the basis of a numerical demand except as qualified in those states requiring the territorial distribution of petition signers. The initiative as a potential instrument of constitutional amendment therefore is desirable, not for the constant use to which it may be put, but because it serves to equalize the balance of groups in the state where that balance has been seriously and inequitably disturbed.

No particular conclusions can be drawn from the number of amendments proposed by the initiative and the number proposed by the legislature in states having both methods of proposal. Amendments proposed by the initiative are adopted in about the same proportion as those which are proposed by the legislatures in those states having both methods of proposal. The variation is less than ten per cent. The number of persons voting on amendments proposed by the initiative does not vary materially from the number who vote on amendments proposed by the legislature.³

The experience of from ten to twenty-five years which several states have had with the constitutional initiative does not warrant the belief that the initiative will be used to effect any radical changes in state government, nor that the distinction between ordinary legislation and constitution-making will be broken down. On the contrary, the people are, as would be expected by most students of history and politics, exceedingly conservative in the amendments they initiate, and the use of the initiative for constitutional amendments should serve to accentuate the distinction between constituent and legislative powers.

The tendency has been to make the amending process easier in the states. This is shown by the decreasing number of states which require the action of two successive legislatures to propose an amendment, and in the action of many states in requiring only a majority of those voting on the question to ratify these proposed amendments. There are still, however, a few states in which the process of amendment is very difficult. If state constitutions were properly drafted, containing only very brief outlines of the government to be established and a few statements of the relation which the government

Amend-
ing
process
grows
easier

³ See tables and discussion in Haines and Haines, *Principles and Problems of Government* (Revised ed.), pp. 100-118.

is to bear to the individual, the process of amendment would not need to be easy. Properly drafted constitutions should not be changed often, nor would they need to be. But most state constitutions are not properly drafted and they do need continual and constant change. They have lost their character of fundamental law, and can no longer be said to contain a formulation of the fundamental principles of government. It avails little to bemoan the fact that state constitutions as they now exist are not as they should be. The present problem is how best to arrange the process of amendment so that the evils which naturally flow from improperly drafted and lengthy constitutions can be mitigated to the greatest extent. Long constitutions necessitate easy processes of amendment. Because of this fact, legislative proposal and popular ratification of amendments have been made simpler and easier all the time. For this same reason the initiative was added to the list of methods for changing state constitutions.

The people of the states have been changing their constitutions very often in recent years by the process of amendment. In the twenty-five years following 1900, about one thousand amendments to state constitutions have been adopted. As many as 150 amendments were proposed in one state during this period. This is in marked contrast to the nineteen amendments which have been added to the federal Constitution in over a hundred years. While it is doubtless objectionable to have the state constitutions undergoing this constant change, it should be borne in mind that they are not the fundamental law of the land in the same way that the federal Constitution is. The federal Constitution should therefore be tampered with as little as is compatible with the national welfare, while the constitutions of the states can be changed often without bringing about, to as great a degree, the same objectionable results. It takes years of judicial construction to fix the meaning of the various parts of a constitution which is the fundamental law of a country, and this should not be lightly disturbed. Because the federal Constitution, however, is an excellent example of proper draftsmanship, it has not been necessary to amend it more than a very few times. The constitutions of the states might have had to be changed more often than the federal Constitution even if they had been properly drafted, but certainly not one thousand times in twenty-five years, even granting that there are forty-eight of them among which to distribute this number.

The third method of formally modifying state constitutions is

that of revision by constitutional convention. The fact that the first state constitutions were formulated by revolutionary bodies in most instances has been mentioned previously. The provincial assemblies not only carried on the ordinary work of government during the days of the Revolution, but also acted in the capacity of constitutional conventions. The people made no special grant of constituent power to these bodies, but somebody had to take the affairs of government in hand, and it was not a time for quibbling over the niceties of procedure and the distinction between legislative and constituent functions. Furthermore, the difference between constituent and legislative functions had not yet been clearly perceived. It was not uncommon for these same assemblies which had formulated the first state constitutions to become the lower house of the legislature in the government which was subsequently established in accordance with the provisions of the constitution. In only four of the original thirteen states were constitutions framed in which provision was made for the revision of the same by a convention. The fourteenth state, Vermont, made provision for revision by means of a convention. Jefferson expressed the fear that the legislative bodies were about to usurp the constituent power which rightfully belonged to the people or representatives chosen by them for the sole purpose of exercising that power. But this fear was perhaps not well founded; and it is likely that the failure to provide for a method of changing these early constitutions was due to an oversight, a lack of consideration of this phase of the subject, more than to anything else. Two other explanations for this omission are also plausible. In the first place, the people of that day believed that it was the inherent right of the people to change the government and the principles in accordance with which it was established and operated, whenever they saw fit to do so. Why, they thought, make provision for something that everybody conceded, to be true, namely, that the people could change the constitution at their own pleasure? In the second place, the notion was abroad in the Revolutionary period that constitutions could be made so as to be very nearly perfect. The rights of man, the separation of powers, the checks and balances, and the reign of law, when combined in one system, were thought to be sufficient to the end of time. These were believed to be immutable and everlasting principles of government. A government established in accordance with them would not need to be changed for a long time to come.

As time went on, however, it developed that these first constitu-

Rise of
constitu-
tional
convention

Calling a
convention

tions needed change, and in the course of a very few years many of them had been changed not only once but two or three times. The application of the deep-seated doctrine of popular sovereignty naturally influenced legislatures to submit the constitutions which they framed to the people for ratification, a procedure not followed in the case of the first state constitutions. And finally, the distinction between legislative and constituent power made itself more evident in the calling together of separate bodies whose sole function was to be the formulation of a constitution. By the beginning of the nineteenth century the constitutional convention as a part of the machinery of state government had become well established. At the present time three-fourths of the state constitutions contain provisions for a constitutional convention. In all of the others, with the exception of Rhode Island, the legislature may call a convention if it is deemed advisable, although in Indiana such a call must have the approval of a majority of the voters who ballot at the election before the convention can be held.

Many constitutions contain a provision which makes it necessary for the legislature to submit to the voters the question of whether a convention shall be called before the call can be issued. This is not necessary in Georgia, however. It is sometimes necessary that the legislature pass the resolution, submitting the question to the voters, by more than a bare majority vote. And if this is coupled with the requirement of a majority of all those voting at the election, the process is made very difficult. A few states make use of the periodic submission plan. The legislature must submit the question of whether there shall be a convention called, at these fixed times, and in some cases may submit the question more often if that is thought desirable. The periods fixed in the constitutions range from seven to twenty years. New Hampshire uses the convention for amendment as well as for a revision, and the question of calling a convention must be submitted once every seven years in that state. The executive is quite often intrusted with the submission of the question of the calling of a convention in states which use the periodic submission plan, and the submission is usually made at a state-wide election. The theory which underlies the periodic submission of this question is that every generation should have the opportunity to say what the fundamental law, under which it is to live, shall be.

A few states have inserted into the constitution rather detailed provisions for the calling of a convention and the way in which it shall do its work if it is called into being. There is a possible danger

that the legislature may refuse to call a convention, even though there is a sincere demand on the part of many people for such a convention. This apparently happened in New York at one time due to a partisan conflict in the legislature, and when the last New York constitution was framed it contained provisions regulating the call and the work of the convention so that legislative intervention is no longer needed. So long as state legislatures fail to reflect accurately the more fundamental currents of political thought in the state, the tendency to put into the constitution detailed provisions concerning constitutional conventions will probably continue to grow.

Pre-con-
vention
investiga-
tions

There is much preliminary work to be done before the convention assembles. The delegates will not always be thoroughly familiar with the existing state constitution, nor will they have the detailed information concerning other state constitutions which is so necessary, in order that pitfalls in constitution-making which have been encountered by conventions in other states may be avoided. The value of a comparative study of state constitutions is very great, because, when all due allowance has been made for the needs of time and locality, there is little distinction to be made between the types of constitutions which are suitable to the various states. The fundamentals are very likely to be the same, or should be the same. The variations which are said to be necessary for local needs are seldom of a fundamental nature. The constitutions of the states are surprisingly similar in most of their fundamental provisions. The preliminary work of gathering the data which the members of the convention will need in their work must of necessity be intrusted to persons who are already familiar with the methods of gathering and arranging such material. Recognizing the need of this preliminary work, several of the more recent constitutional conventions have been preceded by commissions appointed for this very purpose. Sometimes these preliminary investigations are also made before the legislature proposes important constitutional changes through the process of amendment. These commissions must of course be thoroughly impartial in character and be considered only in the capacity of technical workers. In this capacity they can be of use in compiling data, lists of useful books, and bodies of specialized information on the subject of government. These men might well be designated technical advisors to the convention when it meets, to be at the service of committees or members in the drafting of proposals, and to supply information upon request. This was

actually contemplated in the tentative plans for the Pennsylvania convention in 1921, but the voters decided against the calling of a convention. These preliminary investigating bodies were used as early as 1872 by New York, and 1873 by Michigan; and since 1900 they have been employed in Massachusetts, Ohio, Illinois, Nebraska, and New Hampshire. The bulletins which these commissions have published are some of the most valuable sources of information concerning the general subject of state government now available to the student.

Composi-
tion of
convention

During the earlier years of our history, state constitutional conventions were composed of delegates chosen from the same districts as members of the lower house of the legislature. The widespread idea that effective representation consisted essentially in having many representatives, with each representing a small district, had its effect upon the composition of the constitutional convention. As time went on, however, the districts from which convention members were chosen were enlarged, and often the larger district consisted of the state senatorial district, and in recent years the congressional district has been used to some extent. The tendency to minimize the possibility of injecting local issues into state constitutional conventions has also led to the selection of delegates-at-large to be chosen by the people of the state as a whole, and it has been hoped that men of experience and ability in affairs of government would be attracted to the service of the state in this way. In modern conventions, therefore, there are usually delegates from districts of various sizes and delegates-at-large; and the tendency is to make the districts from which delegates are chosen larger units. If there are no delegates-at-large, the likelihood is that there will be two sets of district delegates with each set representing districts of different sizes.

The tendency to reduce partisan factors in the convention is also reflected in the methods of choosing the delegates. In a few instances the delegates have been chosen on a nonpartisan ballot or by a system of limited voting. The method which is still most commonly used, however, is that of party nomination and election. There are, of course, some phases of constitution revising which involve and should properly involve party issues, although they are very few in number; and it may be seriously questioned whether those issues are adequately reflected in the present basis of division between political parties in the states. But it is true that by far the greater part of the constitution should be framed without any

reference to present party divisions, because there is not the remotest logical connection between those party divisions and the subject matter of the state constitution. The only place where party division comes to the forefront in present-day conventions is in the legislative apportionment clause, and the controversy over that clause usually resolves itself into a question of whether the party in power will be able to perpetuate its lease of power by means of the apportionment clause in the new constitution. The legislature occasionally includes the plan of composition and election of the convention in the call which is submitted to the voters, but more usually these matters require additional legislation to supplement the provisions of the constitution.

The size of the convention varies. The Massachusetts convention of 1917 had 320 members, while that of Illinois in 1920 had a membership of 102. The Nebraska convention of 1919 numbered one hundred members. The membership should not be so large as to make deliberative work difficult; but it must, on the other hand, be large enough to satisfy the people that the various important interests in the state have been properly represented. The convention usually meets in the state capital at a time when the legislature is not in session.

Size of
convention

The state constitutional convention is invariably a unicameral body. None of the reasons which prompted the founders of the early state governments to make the legislature a two-house body were applicable to the constitutional convention. Classes are not represented in the convention, or at least no conscious effort has been made to attain such representation, such as was the case in the first state legislatures. The convention has none of the ordinary powers of government, so there is no need to have one house to reflect the wishes of the great mass of the people and another one to act as a check on the first. Furthermore, when new constitutions are submitted to popular vote, the people serve as a check upon the convention so that there is no need of a second house to act as a check upon hasty and ill-considered legislation.

The convention assembles and proceeds to choose a presiding officer. This officer has the usual powers of the presiding officer of a parliamentary body and in many instances is intrusted with the power to appoint committees. Committees are created to the number of twenty or thirty in modern conventions; and to each of them are referred proposals for changing those portions of the existing constitution which have been allotted to each committee, as well as

Conven-
tion
procedure

the new subjects which are not included within the existing constitution but for the consideration of which a committee has been appointed. They do their work in much the same way that legislative committees do, except that public hearings are used more frequently than in the case of most legislative committees. Committees report their recommendations to the convention and the convention often makes use of the device of the committee of the whole to consider many of the more important reports. The committees range in size from five to twenty members in most instances. One of the more important committees often found is that on revision and arrangement. The convention usually adopts the rules of the lower house of the legislature and in some cases the state legislature provides that this shall be done, while in one or two of the constitutions a few of the rules of procedure are prescribed. A majority usually constitutes a quorum to transact business.

Powers
of conven-
tions

Constitutional conventions in the states are subject to the provisions of the United States Constitution, but there are very few express provisions in state constitutions limiting their powers. The state legislatures have at times attempted to curtail the powers of the convention by providing that certain portions of the existing constitution should not be revised, and commanding that the work of the convention be submitted to the voters for ratification, and in numerous other ways.

Three
views:

1. Subor-
dinate to
legis-
lature

2. Con-
vention
para-
mount

3. Su-
preme on
making
constitu-
tion only

There have been at least three views as to the relation of the legislature to the convention. First, that the convention is subject to whatever restrictions the legislature imposes upon it when the call for the convention is issued. Second, that the convention is free from any legislative restriction whatever, and is only subject to the limitations found in the Constitution of the United States and those found in the existing state constitution. This theory rests on the assumption that the convention is a body which derives its powers directly from the sovereign people themselves and that the legislature cannot intervene between the people and the convention. A third theory would have the convention be supreme on all subjects relating to the making or revising of a constitution. The convention is to perform a single primary function, and in the performance of that function the convention cannot be restricted by the legislature. But the convention is not a legislative body, and because of this fact it is said to be limited in its powers by the very nature of its purpose. The convention cannot, therefore, according to this third view, assume to usurp any of the functions of the state legis-

lature, the executive, or the judicial branches of the state government. The convention and the legislature are viewed as co-ordinate organs in state government, each with its own particular work to do. This third view is probably the one which will commend itself to the greater number of states in the future, and it has many adherents already.

The first state constitutions were not submitted to the voters for approval, but it is now the practice in most states to submit the work of the convention to a popular vote. Not quite half of the constitutions contain a provision that the work of the convention shall be submitted to the electorate for ratification by them. But it is the usual thing for the legislature to prescribe in the convention act that the proposals of the convention shall be voted on by the electorate before going into effect where no such constitutional provision exists. There have been some recent exceptions to this rule, for in the last half century about half a dozen constitutions have been put into effect without popular ratification. With one exception, these have been in southern states, and the explanation for their failure to submit the new constitutions to the electorate is to be found in the suffrage problem which exists in those states.

The convention may choose to submit the result of its work as a whole as an entire new constitution. This was the method followed uniformly during the greater part of the nineteenth century. The disadvantages of this method of submission are obvious. Any opponents or critics of any part of the proposed new constitution will vote against the whole proposal. All the critics are thus united in their opposition and strange enough bedfellows unite to defeat the recommendations of the convention. A very excellent constitution may go down to defeat because some minor controverted provisions may have built up a group of enemies for the entire constitution.

Because of this a second method has sometimes been used, which is to submit the essential parts of the constitution as a whole and the controverted portions as separate amendments. In this way the voters may adopt the important parts of the proposed new system, and the portions which are adopted will be a logical and self-sufficient entity standing alone. On the other hand, it will enable the people to decide whether they also wish to adopt those recommendations of the convention which are the subject of more intense dispute. If they wish to adopt none of the proposed constitution, the whole may be rejected.

A third method of submitting the convention's work to the elec-

Ratification of constitutions

Methods of submission of proposed constitution:

1. Submit as one unit

2. Submit disputed parts separately

3. Submit
each
change
separately

torate is to submit it in the form of a series of separate amendments. The objection to this method is that the result of it may be a rather poorly balanced scheme of government. It does not, of course, attempt to do more than make some rather isolated, though fundamental, changes in the existing constitution. This is really a process of amendment on a large scale. In view of the fact that so many of the recent proposals of entire new constitutions have failed of ratification, some of the more recent conventions have felt that it was better to take half a loaf than none at all, and have therefore submitted their propositions in the form of a series of amendments. The conventions which have used this method have met with better success for their product than those which have used either of the other two methods. Massachusetts, Nebraska, and Ohio have fundamentally changed their constitutions by this latter process. The use of this method puts a severe burden upon the voter, however, and to be used effectively presupposes a campaign of education among the electorate.

When
submitted

The proposed changes may be submitted at a general or special election. The item of expense and the doubtful practice of asking the voters to come to the polls often are factors to be considered in the choice of election. On the other hand the adoption of a new constitution is an important event and would seem to merit very careful consideration by the voters. If the submission is at a special election, such consideration is more likely to be obtained. Some states require that a majority of all those voting at the election approve the proposal before it becomes effective; and if a special election is held, the likelihood of getting a majority of all those voting at the election is much better than if the submission is at a general election. It may not infrequently happen that, under existing local conditions in a state, the proposed new constitution might stand a better chance of being adopted at a general, than a special, election. The method of submission, the nature of the proposals themselves, and many other factors must determine the procedure to be followed in this matter. When the people of a state have indicated a desire to have the constitution changed by calling a convention and that convention has done its work carefully and well, no opportunity to give the result of their work every advantage in the race against ignorance and lethargy should be overlooked.

There is considerable difference of opinion over the relative effectiveness of the work of constitutional conventions and state legislatures. There seems, after all, little point in comparing the work of

the two. They are not designed to accomplish similar kinds of work. They are organized for different purposes and that is as it should be. It is well known that the distinction between legislative and constituent functions is not very clear; and it is doubtless true that both the conventions and the legislatures have contributed to blurring the already hazy dividing line between ordinary statutory and proper constitutional material. The conventions have often been shortsighted in placing in the constitution detailed provisions which are of only temporary importance. There has been little disposition on the part of conventions to grapple with the fundamental problems with which the people of a state are faced in the formulation of a new constitution. They have often been content to copy *in toto* entire sections from other constitutions. This is a very laudable practice in some cases, but not so laudable in others. The average convention is seldom a body of farsighted statesmen. If there has been an inequality in the representation in the state legislature under the existing system of state government, the convention will seldom be the body to remedy such a situation. The conventions have done their work with very ordinary skill. It is not to be expected that they will do it differently. If they did, the voters would be less likely to adopt the proposals of the convention than if it were done with only ordinary ability. The truth seems to be that it is not so material whether the convention is an extremely high-minded and able body of men or not. The work of conventions both of ordinary and high ability has been rejected by the voters without discrimination in several instances.

Quality
of con-
vention's
work

When one has canvassed the work of the constitutional convention and considered it as an agency for the performance of a particular task, namely, the revision of a constitution, he gradually comes to the conclusion that a constitutional convention is after all an agency of but limited effectiveness. Unless there is some pressing need for a thorough revision of the state constitution, the convention is not the instrument to be used. The regular process of amendment must be relied upon for even important single changes or groups of changes in the constitutions of the states. The initiative and referendum must be depended upon to effect such additional changes as may be deemed necessary when the legislature will not act. The convention must be reserved for the major surgical operation; and the surgical operation on the government is not welcomed any more than it is by the individual. The fact that the existing government is not efficient in its work, that it is ill-suited to existing conditions

at many points, and that it perpetuates major or minor injustices, is not considered sufficient to warrant a sweeping change in the constitution, which is the group of principles and rules in accordance with which the government is operated. To change the constitution involves more than a change in the texture of the paper and the writing thereon, and it is because of this that the task of revision is so difficult. When this is remembered it is not at all strange that constitutions have not only ceased to be "current literature" as they once were, but that in some cases they are now passing into the limbo of the old curiosity shop. Nothing could be more interesting to the antiquarian student of political institutions and ideas than some parts of many existing state constitutions.

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CHAPTER FIVE

PARTIES, SUFFRAGE AND ELECTIONS

WHAT is a political party and what is the rôle which it plays in the process of government? A recent writer ¹ has defined a political party as a "voluntary organization of individuals or groups of individuals advocating certain principles and policies as superior to all others for the general conduct of the government, and which, as the most immediate method of securing their adoption, designates and supports certain of its leaders as candidates for public office." From the standpoint of function, "Party may be defined as an organized group that seeks to control both the personnel and the policy of government." ² Parties are a relatively modern agency of government and their variety and characteristics have been affected by economic, religious, social, and racial influences. In the United States there have been two large parties, nearly equally balanced in the number of their adherents, for upwards of one hundred years. From time to time there have been movements to establish third parties, but they have usually failed. The causes for these movements have been many and varied, and the same is true of the causes of their failure. The function of a political party is to consolidate into an effective working group all of the people who agree more or less upon what they consider to be the main principles and policies of government. The party also seeks to effectuate the beliefs of its members by securing control of the machinery of government through the making of nominations and participation in elections.

Nature
of parties

Until quite recently parties had no legal status, and were not recognized by state law; but in late years there has been developed an elaborate system of legal regulation of the organization and methods of work of parties. Some state laws define a party in terms of the number of votes cast by the group at the last election and give certain privileges to such groups. Definitions of this type vary

¹ Brooks, *Political Parties and Electoral Problems*, p. 14.

² Sait, *American Parties and Elections*, p. 141.

from a requirement of two per cent to ten per cent of the total number of votes cast at the previous election.

Parties in
the states

The operation and work of American state government cannot be adequately comprehended without a knowledge of the place which parties and party organizations hold in our political life. It is true, perhaps, that the need for party organization in the state and local government is somewhat less urgent than it is in the national government. It should be remembered, however, that there is need of some arrangement which will enable the state government to operate as a harmonious whole, and that this is made the more necessary because of the application of the theory of the separation of powers in state government. The need for this is recognized more clearly in the case of the national government than in the case of the states, but there is a similar need for such an organization in the states also. What the critics of the influence of parties in state government usually object to is that political parties as now organized in this country do not reflect fundamental divisions of opinion on matters of state and local government. Many of those who object to the influence which parties have on the conduct of state government at present would be appeased if party lines were drawn on different and more basic and more permanent issues.

There are several explanations for the continued influence of political parties in state affairs, despite the fact that present party divisions have little relation to problems of local government. 1. The attachment which a person forms for a political party in national campaigns becomes somewhat permanent, and for that reason party organization and party influence tend to persist in local government although there may be no very logical reason for it. However, one would hardly expect a group of voters to unite in a national campaign and then turn about to fight each other in different groups in state and local campaigns. Adherence to political parties is not wholly a matter of reason, but is probably as much emotional as intellectual. 2. The effectiveness of the national party organization and the extent of its influence depend largely upon the maintenance of local party divisions and the spirit of party loyalty. If parties were to disintegrate in the states and counties and cities, the task of preserving present national party organizations would be virtually impossible. Many of the problems of local government cannot be dealt with adequately except in coöperation with the state and national governments; and because of this, many questions which at first thought seem purely local are not divorced entirely

from national policies and issues. If political parties would really take sides on, and formulate their policies regarding the solution of, current state and local problems, political parties might be of some distinct worth in state and local government. Thus far there has been little of this in evidence.

Party organization is usually based upon the same units as those used for governmental purposes,—nation, state, county, city, ward, and precinct, with special organizations for congressional purposes. The machinery of party organization may be permanent, such as the committees which exist for each of the units in the organization, or temporary, such as conventions and primaries.

Party
organi-
zation in
states

Party committees are a very important feature of party organization because they are the administrative bodies of the party and are usually composed of experienced and influential politicians. At the bottom of the committee organization in each state is the precinct committee, and so important is this committee that it has been called the "unit cell" of party organization. Sometimes one man is found instead of a committee, but he is usually given the aid of several others during campaigns. Some states are absolutely controlled by one party, and sometimes the minority party in such states has no precinct committee organization. Precincts of this type are called unorganized. They are found in the Southern states and in Pennsylvania. Most states have the majority of precincts organized. Precincts are of various sizes, ranging from about 200 to 500 voters on the average. Some attention usually is given to distances which voters must travel to reach the polls and to the number of votes which can conveniently be cast in one day. Precinct committeemen are usually chosen in the primary or by local mass meetings of party members, and their offices are unsalaried. Their duties are multifarious, and range from assisting in rounding up slow registrants and helping get out the vote, to watching the polls and providing watchers at the elections. Theirs is the task of keeping up party *esprit de corps* during the intervals between campaigns. The precinct committeeman sometimes receives a portion of the party funds, and these are available for campaign purposes in his district. His wishes are given preference in granting certain favors, such as passing out various local political jobs of one sort or another. The work of the committeeman also leads him into the social life of many of the voters, especially among the lower social strata, and he is expected to be of aid and assistance to the voters of his precinct in numerous petty personal matters.

Commit-
tees

Precinct
committees

Ward committees Many cities do not have the precinct, but have the ward as the smallest unit of party organization, and the committee in charge of political work there is called a ward committee. Township and sometimes city committees are next in rank above the precinct committee. They are intermediaries between the precinct and county organizations. Township and city committees are often of little importance, but the county committee is very powerful in most states. It is the committee standing between the state and local organizations. It is not unusual to find a rather influential local organization, of which some of the county officers are important members, centered in the county court house. Members of the county committee are chosen at the primaries or in local mass meetings of party members; but in some states the county committee is composed of the precinct committeemen, where there is only one in each precinct.

County committee

Congressional district committees for the purpose of aiding local and state committees in congressional elections are also found in some states. The chairmen of the county committees often compose the district committee.

State central committee

At the top of party committee organization is the state central committee. Its influence in the conduct of state elections and in the subsequent distribution of political plums is very great. There are from thirty to forty members on these committees in most states, although great variation in the size of these bodies exists. The members are often chosen by convention or primary from county or district units. Where the committee is small it is not infrequently composed of the chairmen of the several congressional district committees, acting *ex officio*. In a few cases the state convention selects the committee, delegates from each county balloting for their own representatives. The terms of office range from two to four years, with a tendency toward the four-year term. The members of party committees are seldom salaried, and membership on a party committee often demands a small outlay of money as well as a considerable sacrifice of time. Party loyalty, the influence which comes with party victory, personal gain, and the sport of the game of an election are among the various motives which cause people to serve on committees. Party rules govern the committee organization in the few states still remaining where statutes have not been enacted regulating the subject. The committee elects a treasurer, secretary, and chairman, and these often compose an executive committee. The real authority in the party usually rests with this small group. The

state central committee has general power of direction over the party workers in state and local campaigns, aids the national committee in the conduct of national campaigns, and dispenses the funds at the disposal of the party. The committees, particularly the state committees, often possess broad rule-making powers on party matters not covered by statute. One of the most important functions of the state committee is to maintain party harmony in the state. Factional strife within the party may easily endanger the chances for party victory, and the maintenance of party harmony is an important and difficult task. The state committee is also authorized to fill vacancies on the state ticket in a number of states.

Committees in state and local party organizations are sometimes composed exclusively of men and at other times of both men and women. There is no uniformity in practice in allowing women to hold party office. Some states have formed auxiliary committees for women, which arrangement has not been wholly satisfactory; while others have allowed an equal number of women and men. A third group of states has doubled the number of committee members to give places to women members. The party organization outlined in the preceding paragraphs is that of the two major parties. The minor parties have varying types of organization, and sometimes, as in the case of the Socialist party, the organization is very cohesive and effective, being based on a system of dues-paying membership.

The temporary organization of parties consists of conventions and primaries. These are concerned almost wholly with the task of nominating candidates for office. Conventions were formerly very important organizations and performed important functions in addition to the nomination of candidates. The formulation of the constitution of the party, and the adoption of rules of procedure for it so far as not covered by state law were among the more important functions which were taken care of by the convention. The state convention was the most important of the various party conventions in the state and, in addition to the functions mentioned above, it framed the party platform. A few states still retain the convention for this purpose and for the purpose of making nominations for a few offices. The selection of permanent party officers formerly was often left to this body but this is now generally done in primaries. The party convention is of little importance in the majority of states at the present time. The place of conventions in making nominations will be considered presently. Primaries are also temporary party

organizations and will be discussed in connection with the nominating process.

Nomina-
tion a
party
function

There is always an abundance of men who are quite willing to sacrifice themselves to the cause of the party in order that it may have a candidate for each office to present to the voters in the election. Because of the need for concentrating the support of the party upon one candidate for each office, it is necessary for the party to decide which one of the several aspirants for office shall receive its united support. The process whereby the party members select the person they wish to bear the party emblem in the race for a given office is called nomination. The exercise of the function of nominating candidates for office is no small service to the state. Until office seeks the man, such nominations will be necessary. The work of nominating may often be poorly done under the present system. Still, it must be done by someone, and the political party seems to be the only agency fitted to do it at the present time.

Methods
of nomi-
nation:

1. Caucus

Three methods of nomination have been used in American political history. They are: 1. The caucus; 2. the convention; 3. the direct-primary system. The caucus is still used to a considerable extent for making nominations for local offices. The objections to the caucus have been that it is a secret body and that it does not reflect the will of the party as a whole. But in some instances elections would be little more than a farce if some small group of leaders did not take the process of nomination into their own hands. It should also be remembered that in some sections of the country the caucus was and is a general mass meeting of the local members of a party and its work is not secret at all. The caucus still has a place in local politics, although it might be much improved in many ways. One of the purposes of the caucus, as it functions at present, is to select delegates to conventions which are held for the purpose of nominating candidates for the higher offices. This formerly was a very important function, but, since the decline of the convention, it has become less important.

2. Con-
vention

The convention is a body of persons chosen by the members of the party in caucus or primary to make nominations for offices in the district which it represents, and in turn to select delegates to a state convention which represents the entire party in the state and makes nominations for state offices. In addition to the nominating function the conventions also draft platforms.

Representation in conventions is apportioned to districts or counties upon the basis of the party vote in the district. Conventions

are temporary bodies and their work lasts only for a few days. Many abuses grew up in the convention and caucus system, and they were not only quite unrepresentative of the party in many instances, but were composed in part of rascals and criminals. Snap caucuses, packed caucuses, the use of illegitimate influences in conventions, prepared slates, and the like, caused the more respectable members of the party to absent themselves from political caucuses or conventions and to hold aloof from political activity. The result of this was that the work of conventions became worse, not better; and finally such a hue and cry went up concerning the abuses of the convention system that it was totally abolished in many states. The party caucuses were unregulated by law as were the conventions; and the result of this was that no effective restraints existed upon their action. The caucus and the convention system as it did exist could probably have been saved by introducing some legal regulation of them and they might have been retained as effective agencies for the making of nominations. The evils of the convention system have doubtless been exaggerated, and even if the worst pictures of the system were admitted to be true they would not be descriptive of the situation which existed in the rural sections of the country.

The direct-primary "is a system for making nominations by popular elections within a party held under state management." It is called "direct" because it allows the voters to make nominations instead of having their representatives do so for them. The primary is also official, established and regulated by law. There are wide differences in the details of the system as used in about forty states. In some states the primary is used to nominate only the more important state officers, while in others it is used to nominate all elective officers, state and local. Where the latter system is used the ballots tend to become very long and to confuse the voter. In a few states short statements of policy endorsed by each candidate are allowed, and this tends further to lengthen the ballot, though it does aid somewhat in enlightening the voter.

3. Direct-
primary

In order to have the status of a political party so as to be entitled to place candidates in nomination in the primary, various tests are fixed to determine whether a group of voters constitutes a party. These tests usually take the form of a requirement that the group aspiring to such a designation shall have cast either a specified number of votes at the last election, or a given percentage of the total vote cast on that occasion, these requirements ranging from two to

twenty-five per cent. Provision for the recognition of new parties is made by allowing petitions to be filed bearing a stated number of signers. Nominees of these organizations may then have a place on the ballot. The primaries of each party are usually held on the same day, and are conducted in the same manner as regular elections, with secret voting, the customary election officials, and ballots provided by the state. They are to all intents and purposes regular elections within the party for the determination of the candidates of that party. Outside of the Southern states a majority is not required to nominate and this may result in minority nominations.

The filing of a petition signed by a designated number of voters is often a condition precedent to having one's name placed on the primary ballot, and this has presented a number of problems in the handling of petitions, not all of which have been satisfactorily settled as yet. The problems attendant upon forged signatures, verification of signatures, and "petition pushers" are not easily solved, and more extended experience with them is still necessary before the merits of the various methods now in use can be determined.

Open
primary

There are two general types of the direct-primary, the open and the closed. It is impossible to have a completely closed primary, but for many purposes there is sufficient difference between the two to warrant the separate classification of them. The open primary is one in which no test of party allegiance is required. The names of the candidates of all parties are printed on one ballot or on separate ballots and the voter is given all of them to take into the voting booth. When in the booth he may select the ballot he wishes, vote on it, separate the ballots and deposit them all in the boxes provided for marked and unmarked ballots. This promotes secrecy of party affiliation, and to some extent this is desirable. On the other hand, the open primary gives no protection to either party against attacks by concentrating the vote of one party on a weak candidate of the opposition ticket so that when the final election occurs the opposition candidate will be easy to defeat. Closed primaries are more commonly used than open primaries because in the former the voter must indicate his party affiliation before he is given a primary ballot. Tests of party affiliation are not uniform but vary from a mere oath of party allegiance to a requirement of past voting of the party ballot. A few states make provision for dropping out of one primary in case of changing party affiliation. This works a hardship on the voter, however, in that he is deprived of his vote in one primary merely because he wishes to change from

Closed
primary

one party to another. Most states allow voters to change their party affiliation by taking an oath. The primary is closed only to the extent that political honesty prevails among the voters, and this varies considerably in various sections of the country. It is impossible to check up on whether a person who makes a declaration of past party voting tells the truth because the voting is done in secret.

In addition to the partisan primary, there are in many states non-partisan primary ballots, which are used in the nomination of certain officers, usually school and judicial officers. Only two states, Minnesota and North Dakota, have thus far extended the nonpartisan system to the legislative body, and it is used there only in nominating members for the lower house of the state legislature.

Nonparti-
san
primary

The direct-primary method of making nominations has resulted in bringing forward a much larger number of candidates than the old system, and the task of the voter has been increased. The primary system sometimes results in a victory over bossism and the machine; but more often the bosses and machines, where they exist at all, are still able effectively to control nominations in the primary by various methods. Active canvass in favor of certain candidates, and the influence of a strong and closely-knit political organization still count for much even in the direct-primary. The primaries do not insure well-balanced tickets, and to that extent they do not do effective work as agencies for nominating candidates. The convention often puts forward fairly well-balanced tickets out of self-interest, if for no other reason. Each candidate in the direct-primary is left to manage and conduct his own campaign, since the organization cannot openly espouse the cause of any candidate. The tendency is for the party-platform phase of the campaign to drop out of view. Because of this the convention has been retained in some states to formulate a platform. The direct-primary tends to disintegrate the party organization, and to the extent that parties are believed desirable, that must be reckoned an objectionable result. The cost to the state of conducting these elections is very great, and the cost to the individual candidate is much greater than under the old system, because he now has to make two campaigns if he obtains the nomination. This means that candidates with financial backing are still favored, other things being equal, just as they were under the old system. There is much diversity of opinion regarding the quality of candidates chosen under the two systems,

Results of
primary

but arguments on this score are usually quite inconclusive either way.

The primary does have some desirable features and it seems to be a well-established political institution in this country. Objection is sometimes made to the lack of interest of the voter in primary elections, but there was perhaps even less interest in the convention system. Many of the political tricks possible under the old system are now impossible. Much improvement will have to be made in the primary before it becomes nearly as effective as its proponents claimed it would be, and more careful and scientific study of its workings is needed. Several of the Southern states require a majority vote for nomination, and in cases of failure to secure a majority a second primary is held. The system of nomination used is very important in the Southern states because nomination is usually equivalent to election in those states, due to the predominant strength of one party.

When party nominations have been made, the opposing candidates who have been nominated by the different parties must inaugurate a campaign among the voters in an effort to secure election to the office. The elaborate system of machinery which has been developed for carrying on a campaign preceding an election must next be studied.

Campaign methods

Some of the methods which are used in the campaign attempt to reach the voter as an individual, while others aim to reach the voters as a mass, or at least in large groups. The methods which are used to reach the voters individually have been enumerated by Professor Brooks in his book on Political Parties and Electoral Problems as follows:

1. Canvassing. (a) Personal interviews or (b) correspondence addressed to the voter personally may be effective in some cases. Personal interviews are more likely to be widely used in the rural sections of a state than in urban centers. The cost of large-scale personal solicitation is one of the serious items of expense in the larger cities. The same is true of post cards or personal letters. Handbills are costly and have not proved very effective.

2. Methods of reaching the voters as a group. (a) General political meetings. These are sometimes very formal and large-scale affairs, but at other times they are informal street-corner meetings. Occasionally they consist of small groups of persons gathered in some private home or in some small private hall. These meetings vary in effectiveness and costliness but some of them are useful in part for

the publicity that attends them. However, few converts are made at political meetings of this type because usually only members of the party attend. Only one side of the questions discussed is presented. Joint debates are held occasionally but they are not very common. (b) Picnics and public celebrations. These public occasions sometimes afford an opportunity to address a large group of people which is eagerly taken advantage of by each candidate. (c) Newspapers. In some important campaigns newspapers are purchased outright with a view to moulding public opinion, though this is not often done because of the expense involved. Large numbers of newspapers support either side in a campaign, and for widely varying reasons. In the writing of editorials, in the juggling of headlines and in the write-ups of current campaign questions or opposition meetings, these papers may exert a powerful influence over a large number of people. "Boiler plate" is often furnished to the rural press, some of whom are glad to print it to fill up space. Paid advertisements are also used in some instances, in addition to the regular campaign advertisements of the individual candidates. (d) Billboards and moving pictures, phonographic speeches and the radio. All of these are recent devices in political campaigning. (e) General campaign literature. Pamphlets and books of instruction for field workers, as well as party platforms, are usually given widespread circulation. Printed biographies of candidates are often widely distributed among the public. Privately printed cards with the photograph of the candidate and a pithy statement of his particular political hobby are much used in local campaigns.

In addition to the methods mentioned above, there are the usual straw votes and house-to-house canvasses. The poll books, which are lists of the voters in the district used for purposes of checking up on voters who come to the polls, are of great help to the party workers. There is the usual amount of heat incident to making charges and countercharges against parties and candidates and the more demonstrative torchlight procession which is used much less now than formerly. Provision must also be made for getting the sick, the lethargic, and others to the polls on election day. For the conduct of all these many activities a great deal of money is required, and the methods by which it is raised and expended will be noted shortly. Many persons doubt the value and justifiability of campaigns; but, admitting that much time, money, and energy are expended in the effort to rouse the voters, it is difficult to see how they could be roused from their usual political lethargy in any other

way under present conditions. Even so, scarcely more than fifty per cent of all the eligible voters are likely to be induced to go to the polls.

Party
finance

Tremendous amounts of money are spent in each state election, and to this must be added the money which is spent in national and municipal elections.³ The problem of raising and spending these huge sums of money has only recently been regulated by law, and even now the most skilfully drafted laws cannot control adequately the financial activities in which parties are engaged. The sources of party funds are still many and various. There are many party followers who voluntarily contribute funds to the campaign for a variety of reasons. They may contribute because they believe in the principles of the party and wish to aid in putting them into effect. Or they may have a personal interest in seeing the party win the election because their business or profession will benefit by the inauguration of a particular policy advocated by the party. Again, candidates for office contribute because they feel it incumbent upon them to support the party campaign chest. Donors may be in a position to secure a place, an appointment, or some remunerative favor of one sort or another from the government if the particular party wins the election. Then, too, there are involuntary contributions which are exacted in return for promises of favors or protection at the hands of the government if the party wins. Owners of illegal businesses sometimes are called on to contribute in consideration of their being allowed to continue their business unmolested if this party should obtain control of the government.

Corrupt
practices
acts

Half a century ago public opinion tolerated many practices in the raising of party funds which would no longer be countenanced. Because of the tendency on the part of the public to examine more strictly the methods whereby party organizations raise funds, a great many laws have been enacted regulating this phase of party activity. These laws are usually called corrupt practices acts. The four main purposes discernible in these acts have been enumerated as follows⁴:

- "Publicity of campaign contributions and expenditures.
- Prohibition or limitation of campaign contributions.
- Definition of legitimate and illegitimate forms of expenditure.
- Limitation of the total amount to be expended."

³ Pollock, *Party Campaign Funds*.

⁴ Brooks, *Political Parties and Electoral Problems*, p. 335.

1. Publicity of campaign contributions and expenditures is sought. This is done by requiring party officials to make reports of the contributions made to the party funds, by whom made, and the amount given, these reports to be made periodically either before or after the election. Sometimes these reports include personal service contributions as well as those in money. 2. Contributions by corporations are often prohibited, and so are contributions from anonymous sources, and in some cases from officeholders as well. Assessments on civil servants and holders of office were very common until quite recently, and despite laws prohibiting them, they have not been entirely eradicated. The size of contributions is regulated by many states and the amounts which may be contributed by candidates are often limited. The sums which candidates may spend personally are also limited by at least half the states, but it is still possible for friends to spend money in behalf of the candidate in ways not easily detected by officers engaged in enforcing these laws. 3. In the further regulation of party finances, long enumerations of legitimate objects of expenditure are often to be found and also long lists of prohibited objects of expenditure. There is no unanimity of opinion as to the particular items which should be included in each list, and they vary greatly from state to state. Expenditures of all kinds on election day are often prohibited. Numerous regulations on the use of newspaper publicity are to be found, and attempts have been made in some states to curb the influence which employers sometimes are tempted to exert on their employees. 4. Limitations on the total amounts to be expended are found in only five states.

The corrupt practices acts, which have been passed in most of the states, represent mere gestures rather than deliberate or well-planned attempts to regulate effectively the entire problem of the use of money by political parties. They are still defective in many respects, and under present conditions will continue to remain so for some time to come. They are particularly lacking in "teeth" to make them serious deterrents to dishonest practices in many instances. The problem of administering these acts has proved very difficult also. There can be little doubt, however, that they do reflect a growing tendency in the public mind to disapprove of so-called shady methods of party financing.

A machine is a small group within the party which has for its main purpose the private benefits obtainable through the medium of a party. Parties are usually considered as agencies for more effectively registering the will of the people in a representative gov-

Purposes:

1. Publicity

2. Prohibited sources

3. Use of money

4. Total expenditure

Defects in acts

Machines and bosses

ernment. But sometimes this view is lost sight of and the powers of a political party are turned to serve private ends solely. A machine differs from a party organization in that it seeks primarily to serve personal or limited group ends rather than the public. The machine should not be confused with what is often called "the organization." The latter usually refers to a group of party leaders and does not carry with it the odium which customarily attaches to the term "machine." Every party must have a group of leaders, men who devote considerable time to party affairs, who are known as politicians, and who may even make a legitimate profession of being party leaders. The "organization" is legitimate if parties themselves are useful and desirable. But "machines" may be vicious and dangerous, even though parties are conceded to be useful in the process of popular self-government. The boss is the person who directs and controls the actions and policies of the group known as the machine. Machines and bosses are typically American institutions and are not found in foreign countries to the same extent to which they exist in this country, perhaps because parties are less highly organized in those countries and because the opportunities for financial gain in politics are less great.

Machines and bosses seldom dominate the national parties, but they have held sway for long periods of time in state and local party organizations. The most famous of these machines have flourished in the larger cities of the United States. Bosses may be found quite as well entrenched in rural as in urban localities, although the term is more often associated with city government than with county or state government. The famous Tammany Hall machine within the Democratic party in New York is well known to every reader. This organization had its beginnings in a small club named after a legendary Indian chief. It did not become a strictly political organization until the end of the first quarter of the last century and it still retains many of its early social features, though these are incidental to the political aims of the society. The club is now organized on a very elaborate basis, with squads of twenty-five voters forming the smallest units, with precinct captains and assembly district committees, culminating in a general committee of forty-six members from the assembly districts. This committee of forty-six is too large to work effectively without the aid of subcommittees, and these small committees are the ones which really direct the work of the society. The leader of Tammany Hall may or may not be a member of this committee, but he seldom holds office.

He directs the work and policies of the society largely through agents and through the force of his personal strength as a political leader.

Philadelphia has had its rings or machines at various times, one of the more famous ones being the machine headed by the Vare brothers in the last quarter of the nineteenth century. The dominant machine in Philadelphia is within the Republican party. Chicago has had considerable experience with bosses and machines, but no single machine has been able to retain its hold on the government of that city for any great length of time.

It is almost impossible to give a comprehensive account of bosses and machines and their work, for each boss works in his own way, and each machine is organized on its own plan. Bosses are sometimes unscrupulous and selfish individuals, but usually they have been very likeable human beings, with considerable natural abilities of leadership; and at times they have given the cities which they have dominated fairly efficient, though somewhat costly, government. The boss has gained in power from the long ballot. When the ballot is long, and the voter does not know the various candidates nor their respective qualifications, the boss can be of aid in suggesting various candidates for whom electors may vote. Machines disseminate information and propaganda in favor of certain measures and candidates. This is a service to the voter, regardless of the objections that may be advanced against it. A machine would have much greater difficulty in maintaining its hold upon the people in a government which operated on the short-ballot principle. The application of the short ballot would drive bosses into the open, and that is usually the one thing that they do not wish. Their success in directing the voters lies largely in the deviousness and secrecy of the methods which they use and the influences which they bring to bear to attain their ends.

Machines sometimes control both the executive and the legislative branches of government. At times they have even controlled the courts. The fuel with which the boss furnishes energy to run the organization consists of rake-offs from illicit business activities of one sort or another in return for protection against prosecution, and of contributions from special interests desiring other forms of special favors. Contracts for public work also afford financial fuel.

It is easy to denounce machine rule, but it is difficult to eradicate it. The machine is usually well organized and is able to defeat the reformers at their own game either by stealing some of their thunder or temporarily releasing its hold upon the party and the govern-

ment. That machine rule is not desirable is conceded by most people. That it is a natural result of present political conditions few people recognize and fewer are willing to admit.

Parties and
public
opinion

In addition to making nominations and conducting campaigns for the election of the candidates nominated for office, political parties play an important rôle in moulding public opinion, particularly as it is related to the conduct of government. Committees or conventions are constantly at work attempting to mould public opinion on political questions. Elaborate platforms are formulated and promulgated, and speakers, pamphlets and other propagandist materials sent out to convert the public to the point of view advocated by the particular party. The newspapers are often great aids in this educational campaign, sometimes editorially, sometimes in the news columns, and it even happens that a party will take over the entire control of a locally influential newspaper in order more effectively to propagate its political doctrines. Then there are the elaborate campaign textbooks which contain an enormous amount of more or less accurate information about the party and its activities. All told, these activities of parties in trying to influence and reflect public opinion, and to make it an operative factor in the conduct of government constitute a very important service to society. Some may think that it could be done better, but no organized agency exists at present which could do it at all on the scale attempted by party organizations. Political parties constitute a very important factor in the formulation and reflection of public opinion.

The
suffrage

One of the first and most fundamental problems which must be determined in a representative government is that of suffrage. Who shall be allowed to vote? The so-called right to vote was looked upon by the founders of our government as a privilege, not as a right, and they believed that the privilege of voting should be restricted to a comparatively small group of persons. The extent to which the suffrage shall be granted is settled largely by considerations of convenience and policy. The theory that there is an inherent "right to vote" never was applied in the United States and is now pretty thoroughly exploded elsewhere. For all practical purposes the people who vote are the persons who exercise the sovereign power of control in a popular government. So when we speak of sovereignty residing in the people in a popular government, we should distinguish the group in whom sovereignty rests from the group which, in the final analysis, actually exercises the powers of sovereignty. Of course, we naturally expect those who are allowed

to vote to consider the interests of all those who cannot vote as well as their own interests.

The right to vote for national officers is granted by the national government, but the qualifications for those persons who vote for such officials are fixed by the states. The same qualifications are demanded of the electors in national elections as those required of voters for members of the lower house of the state legislature. The states grant the right to vote for state and local officers and also fix the qualifications of voters for these officers, subject to certain express restrictions which are found in the federal Constitution. These restrictions have been mentioned previously, and are to be found in the Fourteenth, Fifteenth, and Nineteenth Amendments to the United States Constitution. Discrimination by the states against voters on the basis of race, color, previous condition of servitude, or sex is forbidden by the federal Constitution.

The tendency to lower or abolish most of the qualifications required of persons who wished to vote was one of the marked phases of our political life during the nineteenth century. We have previously noticed the many qualifications for voting which were imposed in colonial times and under the first state governments. The coming of manhood suffrage, followed later by woman suffrage, tended to break down the many legal tests which had been required for voting in the early period. There is, however, now discernible a movement to restrict the suffrage, and to require different and higher qualifications for voting than those required during the last half century. The high-water mark of universal suffrage has probably passed and we may expect to see further curtailment of the right to vote as time goes on.

Qualifications for voting may be divided into two groups: those which are universally imposed in all states, and those which are in force in only some of the states. The requirements of age and residence fall within the first group, while citizenship, taxpaying, and educational qualifications are included within the second group.

Qualifications for voting:

1. Age

Every state requires that a person be twenty-one years of age before he is allowed to vote. Twenty-five years is the age fixed by some foreign countries, but for several centuries the Anglo-American practice has been to specify twenty-one years as the minimum age at which one may become an elector.

Residence for a fixed period of time is required by all of the states. The length of the period demanded for participation in local and state elections varies, and it also varies considerably from state

2. Residence

to state for the same elections. Residence for a period of thirty days, three months, six months, and from one to three years is required for participation in local and state elections. During the World War special arrangements were made to allow the soldiers who were in the service to vote, except in those few states where the constitution expressly forbids this. Legal residence depends largely upon the intention of the person, although intention is not the sole test which is applied by the courts to determine whether a man is legally resident within the ward, county, or state.

3. Citi-
zenship

Arkansas is now the only state which still allows persons not citizens of the United States to vote. Many states had previously allowed noncitizens to vote if they had declared their intention of becoming citizens; but following the opening of the present century a movement to debar such persons from voting set in, and most of the few states which did not require the voter to be a citizen at the outbreak of the World War abolished noncitizen voting during the war period.

4. Educa-
tional
tests

The tendency to require some sort of intelligence or literacy test for voting is becoming more pronounced. We are attempting to establish a selective process among prospective voters, and instead of making the holding of property or the paying of taxes the basis for selection, as was formerly the case, we are now requiring educational qualifications to take their place. The first state to require an educational test was Connecticut. The test adopted in that state in 1855 required only ability to read. In New York a test on the reading and writing of English was adopted in 1922. Almost half the states have educational tests differing both as to the purpose and the requirements exacted, and in the methods of administration which are employed. Many states merely require that the applicant be able to write his own name; some add that he must be able to read; while others require that specific documents be read and also that a reasonably intelligent interpretation be given of the material read. The administration of these tests is usually in the hands of governmental officers and they are sometimes administered in a strictly partisan manner. Some southern states exclude the negro vote quite effectively by the use of literacy or educational tests. The administration of educational and information tests has been placed in the hands of the educational department in New York, and an attempt at impartial certification and examination on a large scale is being made in that state. It is easy to overestimate the

value of educational tests because ability to read and write does not necessarily signify political intelligence or interest.

About one-third of the states still require the payment of some tax as a qualification for voting. Eleven of these are southern states. There is much difference in the strictness with which the taxpaying qualification is applied; in some states it is only a formality, while in others it is used to accomplish the virtual disfranchisement of a large number of voters. When elections are hotly contested and when each party watches for the slightest opportunity on which to challenge votes of adherents of the other side, the party officials are often likely to see to it that the poll taxes which are required in some states are paid at the proper time. Even in some cases they go so far as to pay the taxes for the voter, trusting that he will then respond to this favor by casting his vote for their party's candidates.

5. Tax-
paying

Some of the southern states make use of educational, taxpaying, and residence qualifications to effect the disfranchisement of the negro. These same qualifications would often disfranchise many of the whites also, but the tests are so administered that the white voters are usually allowed to qualify for the suffrage. Sometimes the taxpaying and educational or literacy qualifications are put in the alternative in order to let the white voter through and eliminate the negro voter. Northerners are usually quite vehement in their criticism of the southern states because of the virtual disfranchisement of the negro voter; but the problems involved in this question are not to be settled by a mere outburst of rhetoric or a resort to the general doctrines of the rights of man or universal suffrage. The economic and social forces which are involved in the situation are of as great or greater influence than are the more obvious political considerations. From a distance it is easier to formulate a solution than it is to execute it near the scene of conflict. The fact that some of the discriminations practiced in the southern states are perhaps contrary to the second section of the Fourteenth Amendment has been noted in another connection.⁵ The following reasons have been suggested why the Fourteenth Amendment has not been enforced in this connection: "(1) It would be difficult to determine the exact number of persons disqualified from voting by state law; for many persons, otherwise qualified, do not take the trouble to register, or if registered, fail to vote; (2) any plan of reduction would probably also affect some

Qualifi-
cations in
southern
states

⁵ See Chapter II.

northern states in which literacy qualifications are found; (3) there is some legal doubt as to whether the Fifteenth Amendment did not repeal the reduction-of-representation clause of the Fourteenth Amendment; and (4) the real contest in southern states takes place in the Democratic primary from which negroes are largely excluded, and the Fourteenth Amendment does not apply to exclusion of voters from primaries held to nominate candidates for office.”⁶ The United States Supreme Court has recently ruled, however, that a primary is an “election” within the meaning of this part of the federal Constitution.

Certain classes of persons are disqualified from voting altogether. Paupers, insane persons, wards, and in some cases criminals, are not allowed to vote. Some states debar persons who have committed election crimes from voting and one-third of the states disqualify for bribery. An act of the legislature is usually necessary to restore the right to vote to persons thus debarred.

It is very difficult to learn just what effect each one of these qualifications which have been placed upon the right to vote has upon the number of people who register and vote in elections.⁷ We do not know just how many persons otherwise qualified to vote are denied that privilege because of inability or failure to pay the taxes required in some states. Nor do we have any reliable information as to how many persons are unable to vote because of educational or literacy qualifications. The effect of the residence requirement upon the number of people who are entitled to vote is only vaguely known. We do know that a combination of these tests serves to disfranchise many persons in some portions of the country but we do not know the amount of decrease attributable to each.

Registra-
tion of
voters

Most states now require that a person must register as a voter in advance of the date fixed for the election. Lists of voters to serve as aids to election officials in checking up on the qualifications of those presenting themselves at the polls to vote had been in use for many years. They were prepared by local officers who constituted a registration board. But these voters' lists which were made up by local officials were ineffective checks upon illegal voting, because it was too difficult to investigate cases of voters whose names were on the list though illegally placed there. Voting in the name of persons who had long since moved out of the community, or who were deceased, was not infrequent in many of the larger cities under this system.

⁶ Brooks, *Political Parties and Electoral Problems*, p. 369.

⁷ Holcombe, *State Government in the United States* (2nd ed.), Chap. VI.

As early as 1866 state movements began to require the voters to register personally in order to have their names entered upon the voting list at a certain fixed time previous to the date of the election. From two to four days are commonly set aside for registration and in some cities registration must be made every year or two years. In other states registration books remain open through a period of several months. The full name, residence, occupation and much other information is required by some registration laws. This information is tabulated with the names of voters in alphabetical lists, is published, and furnished to the election officers at the primary or final election, as the case may be.

Representatives from both parties are usually members of registration boards and in this way it is intended that attempts at fraud shall in some measure be checked. The members of these boards are chosen in a variety of ways, but their duties are much the same in all states. The efficiency with which these officers perform their duties and the impartiality with which they administer the registration law will influence materially the utility of registration prior to election. Of course it is practically impossible to make a registration complete; and provision is almost always made for excepting those who are unable to enroll because of illness or for other good reason. While it is impossible to register the entire vote, it is nevertheless true that registration laws have prevented to some extent many of the illegal voting practices which were so prevalent prior to the enactment of them. Laws of this kind do not entirely insure pure elections, but they aid in securing them. They accomplish something worth while on this score, even though they keep some voters from the polls because of timidity, inability to take time off to register, and indifference. Political party organizations and well-organized machines spend much time, money, and effort in getting voters of their group to register. Voters need to be reminded of the registration date.

The preliminary preparations for an election, such as the selection of polling places, the preparation of ballots, the furnishing of voting places with booths and the numerous supplies which are needed, the distribution of copies of instructions and election laws, sample ballots, the regular ballots, etc., are usually made by county officials or some special local election board.

Election officials are usually appointed, and often selected so as to give bipartisan representation on the board. There are usually present at the polls judges, inspectors, clerks, and watchers conduct-

The
election

Election
officials

ing the work of checking up the registration lists when the voters apply for ballots, handing ballots to the voter, placing the ballots in the boxes or detaching coupons if that system is used, and aiding illiterate voters in the preparation of their ballots. These positions on election boards are seldom filled on the basis of merit or fitness for the work, but upon the nomination of party officials. Challengers from each party are often found at the place of election or at least during the counting of the ballots and are sometimes provided for by law.

Counting
votes

When the voting has ceased and the polls have been closed, the ballots are counted by the regular election board, or they are sealed in packages and sent to some central body, perhaps a county canvassing board. In many states a state canvassing board checks up on the results of the count by local boards and if the defeated candidate wishes to contest the election he may usually do so in the courts. If the winner is determined upon by the central board and the result is quite clear no contest will occur, and a certificate of election will be issued to the successful candidate by the state or county officer with whom the election report is filed. Legislatures are usually constituted the judges of their own elections and contested legislative elections are therefore usually not settled in the courts.

The
ballot

Ballots

One of the last phases of election procedure to come under comprehensive legal regulation was that of the ballot.

During the colonial period, and for several years under the early state governments, *viva voce* voting was common. Mr. Albert J. Beveridge tells in a very interesting way of the methods which were used in the early elections in this country. The following is a description of the procedure in a congressional election held in Virginia in which John Marshall, later famous Chief Justice of the United States Supreme Court, was one of the candidates.⁸

"Late in April the election was held. . . . A long, broad table or bench was placed on the Court-House Green, and upon it the local magistrates, acting as election judges, took their seats, their clerks before them. By the side of the judges sat the two candidates for Congress; and when an elector declared his preference for either, the favored one rose bowing, and thanked his supporter. . . . The voter did not cast a printed or written ballot, but merely stated, in the presence of the two candidates, the election officials, and the assembled gather-

⁸ Beveridge, *Life of John Marshall*, vol. II, pp. 413-14.

ing, the name of the candidate of his preference. There was no specified form for this announcement.

“‘I vote for John Marshall.’

“‘Thank you, sir,’ said the lank, easy-mannered Federalist candidate.

“‘Hurrah for Marshall!’ shouted the compact band of Federalists.

“‘And I vote for Clopton,’ cried another freeholder.

“‘May you live a thousand years, my friend,’ said Marshall’s competitor.”

And the boosters for a particular candidate would enthusiastically receive the voter into their ranks and the keg of liquor which was nearby would again be tapped. The polls were often kept open for several days in the early years of our history in order that all persons in the district might be enabled to vote. This method of voting had many defects, and the purity of elections was not always easy to maintain. Before many years of the nineteenth century had passed, the demand for election by ballot became pronounced.

Viva voce voting was replaced in some states at a very early date by the ballot, and by the middle of the nineteenth century the *viva voce* method had been discontinued, except for certain local elections, in all of the states. The first ballots were printed privately, usually by the candidates for office, and these ballots were distributed by faithful party workers immediately outside the polling place. They were often distinguished by color, shape, or the texture of the paper, so that it was not difficult to know how a man voted. If a person wished to do so he might bring his own slip of paper with him and write upon it the names of the candidates for whom he wished to vote, and deposit it in the ballot box. Fraud was not difficult of perpetration under such conditions, and election frauds, such as stuffed ballot boxes and the like, were not uncommon.

The lack of secrecy in elections and the opportunity for election frauds finally resulted in more minute legal regulation of ballots and voting procedure. Beginning with 1888 the Australian ballot was introduced in the states and is now the prevailing system of voting in this country. The Australian ballot refers not only to the ballot itself, but includes much more; it is a system of conducting elections. Under this system the ballots are printed by the state and are distributed at the polling place at the time of election. Each voter is given one set of ballots and may not get another one

Australian
ballot

unless he hands back the one he has spoiled. As soon as the voter gets the ballot he must go to the booth which is curtained off, and mark his ballot in secret, fold it, and bring it to an election officer. He deposits it in the ballot box, or else the voter himself deposits the ballot in the box, in full view of the election officers. The voter puts a cross mark opposite the candidate or list of candidates for whom he wishes to vote. Sometimes the voter is allowed to write in the name of a candidate for whom he wishes to vote in case the name of that candidate does not appear on the ballot. Provision for giving assistance to those who are unable to read or write is also made in the laws regulating elections. Various attempts to stuff the ballot box and to vote several times instead of once have given rise to a number of protective devices, such as a detachable numbered coupon, which is deposited in a separate box at the same time that the ballot is placed in the ballot box.

Kinds of
ballots:

1. Party
column

The names of the candidates of one party for all of the offices to be filled at the election may be printed in one column on the ballot. Such a ballot is called a party-column ballot. In several states there is a circle at the top of the column, and in the circle there is a party emblem, such as a Bull Moose, a Donkey, or an Elephant. This is sometimes called the Indiana ballot. The voter may place an "X" in this circle, thereby indicating that he casts his vote for the candidates of that party for the various offices to be filled. This is what is meant by the expression "voting the straight ticket."

2. Office
column

There is another type of ballot which is called the office-column ballot. In this ballot the names of the different candidates for an office, let us say for example governor, are listed under the office. The Republican candidate is named, and after his name is printed the party designation *Republican*. The voter must place an X-mark opposite the candidate he wishes to vote for. This is often called the Massachusetts ballot. There are various modifications of these two principal types of ballots, but fundamentally all ballots are prepared with either the office- or party-column principle in mind.

The advantage of the party-column ballot, especially when it is accompanied by the party emblem in the circle, is that it encourages straight party voting and also that it lightens the burden of the voter. Illiterate voters are not confused, and if they cannot read they can at least make an X-mark in the emblem circle. Those who criticize straight party voting naturally oppose the use of the party-column ballot. The office-column ballot requires more dis-

crimination on the part of the voter, for he must read over the list of candidates for each office, see which one represents his party, and then vote for him. Or, if the voter does not know which candidate he wishes to vote for on the basis of party lines, he must, in the office-column ballot, look over the names of candidates to locate the one for whom he wishes to vote.

The nonpartisan ballot is used by many states for local, school, and judicial elections. In this type of ballot there is no party designation whatever, the voter being required to select the name of the candidate he prefers from among the names listed under a particular office. When ballots are used which have no party designation, some device for rotating the names is frequently adopted, because experience has shown that if the names are listed alphabetically on all ballots the persons whose names begin with letters which bring them near the top of the list are likely to obtain some additional votes because of their positions on the ballot.

3. Non-partisan ballot

Voting machines are used in about a dozen states. The use of machines tends to expedite the process of voting to a marked degree, and also prevents the casting of defective ballots. They have now been simplified to the point where almost any person can vote on them without difficulty, and many of the arguments which were previously available against them have now disappeared. One of their greatest advantages is that they eliminate recounts, and, as a result, contested elections.

Voting machines

One of the more recent devices designated to reduce the number of nonvoters in elections is the absent-voting ballot. Beginning with Vermont in 1896 the movement in favor of absent-voting laws swept over the country, and now more than three-fourths of the states have made provision for absent voting.

Absent-voters laws

The early laws of this kind did not allow ballots to be furnished the absent voter prior to election day; but the tendency in recent legislation has been to allow this, such as is the case under the North Dakota and Minnesota laws. There are certain dangers in issuing ballots prior to election day, but a variety of safeguards have been introduced which are aimed to curb any attempts at fraud. The choice between secret voting and the adoption of precautions guarding against fraud has to be made in the formulation of absent-voting laws, and of the two dangers many states are choosing to let the absent-voter's ballot be distinguishable from other ballots in order that fraud may not creep in. If the absent-voter's ballot is clearly marked, the danger that any endless chain schemes will be

started is very small. Sometimes a small fee is charged for sending out an absent-voter's ballot, elaborate rules are prescribed for preserving the purity of the election process, and due certification of all the steps in the process by a proper public officer is usually required. The statutes often require that the ballot be marked in the presence of an officer, but in a manner so that he may not see how the ballot is marked. When the time comes to count the votes cast in the election, the absent-voter's envelope is opened, the signature compared with his signature on the registration book, and the ballot then deposited in the box with the other ballots.

Some states permit absent voting in primaries as well as in the regular elections, and a few states allow registration *in absentia*. Some states confine absent voting to voters who are outside the state at the time of election. But in other states there has been a tendency to extend the privilege of voting *in absentia* to persons inside the state. Some states permit persons who are unable to attend the election because of illness, or other physical disability, to vote by absent-voter's ballot. Where this is allowed provision is usually made for a physician's certificate of disability. Thus far the number of voters who avail themselves of absent-voting laws does not seem to be very large; but as voters become more familiar with these laws and the technique of voting thereunder, the number of persons who vote by this kind of ballot may be expected to increase. But the abuses possible under some absent-voting laws have led to the abolition of them in a few states.

Nonvoting
and its
causes

There are about fifty million people in the United States who are eligible to vote. Less than two-thirds of this number participate in Presidential elections, and in state elections slightly more than half of the eligible voters go to the polls. Some states average as high as sixty or seventy per cent, but many others average less than fifty per cent. Some of the causes for nonvoting are perfectly legitimate and excusable, such as illness or loss of the voting privilege through change of residence. Some persons do not "believe in politics" and stay away from the polls for that reason. Others feel that their vote counts for so little that they do not think it worth while to vote. A few feel that they are too busy to take the time to go to the polls. There are always some who fail to register and do not wish to take the trouble to swear in their vote, or who find it inconvenient to produce witnesses as required by some statutes and therefore do not vote in the election. Others are too timid to vote. But after due allowance is made for these cases

there still remain from twenty-five to thirty per cent of the eligible voters who do not participate in elections for no reason except their disinclination to do so. Sometimes the predominance of one party makes it almost useless for persons of the opposite faith or even for all of the members of the predominant party, to go to the polls. This is particularly true in some of the southern states, such as South Carolina, Louisiana, Mississippi, and, to a somewhat lesser degree, in the northern state of Pennsylvania. But even in states where party lines are very closely drawn and where elections are hotly contested, there is noticeable the same indifference on the part of many voters.

Occasionally the proposal is advanced that some form of compulsory voting should be adopted in the states, and that a penalty should be visited upon persons who do not exercise their right to vote. A few foreign countries have compulsory voting laws. The cost and effort of enforcing such laws would perhaps be greater than the ultimate benefit to be derived from them. Civic interest cannot be forced in this way; and even if it can be forced it is questionable whether it is desirable to do so. The assumption is commonly made that the minority rule resulting from nonvoting in the United States is inherently vicious. This is no more than an assumption, however, and many careful students of government believe that the evils of minority rule are easily over-emphasized. It is asked: Is it not proper that those who are interested enough to vote should direct the policies of government? Certain it is that berating the voters for their lack of interest will not create an interest on their part in problems of government.

Compul-
sory
voting

Woman suffrage has been used extensively for so short a time that it is difficult to make any generalizations about the effects of this last extension of the franchise. About the same proportion of women as men vote, and they vote in the same way. Some observers have thought that women voters have taken more definite stands than men on emotional or moral issues, and have had a tendency to purify politics to some extent; but such conclusions are based upon opinion largely, and little data can be adduced in support of them.

Woman
suffrage

A majority of the votes cast is seldom necessary to elect. A plurality is usually sufficient. This has caused much adverse criticism to be uttered against prevailing election methods, but no very satisfactory solution of the difficulty has as yet been presented. In municipal elections an attempt has been made to introduce prefer-

Plurality
elects

ential voting, whereby an effort is made to give the candidates the benefit of first, second or third choices. It is believed that this method reflects the will of the voters more accurately than does the present system of plurality election under the single-vote system. Over fifty cities now use the preferential ballot, but it has not been adopted in state or national elections thus far.

Election
laws

The conduct of elections has been subjected to minute regulation in most of the states. Each has a great mass of legislation covering every phase of the nomination and election of officers. Many states issue compilations of statutes dealing with parties and elections, ranging in size from one to three hundred closely printed pages of the size of an ordinary college textbook. Two hundred pages is perhaps the typical size of these compilations. In these laws regulating elections will usually be found a registration law, an absent-voting law, a law regulating general elections often containing over one hundred paragraphs and dealing with all conceivable phases of their conduct, a primary law, a statute governing township and other local elections, statutes regulating the counting and recounting of votes and providing for contesting elections, an elaborate corrupt practices act, and in addition to these may often be found statutes governing certain phases of federal elections. Finally, a statute on special elections is usually included.

These election laws are not always strictly enforced. They are often hastily drawn and cover some phases of elections very well and others very poorly. They are difficult to understand and the state authorities who are charged with the compilation of such laws usually find it necessary to insert long and detailed explanations and interpretations of the statutes in order that the election officers may have some safe guide in applying them. Many of these compilations furnish evidence that the legislators have not given the problems of elections, primaries, and the legal control of parties careful thought or attention. The lawmaking bodies have usually been content to pass an act regulating some specific phase of elections, or eradicating some specific evil practice which has caused a popular protest or demand, without much thought of how it would fit in with existing provisions of the election laws. A few states have very excellent election laws, but they are very few indeed.

Enforce-
ment

One of the main reasons why election laws are not strictly enforced in most states is that public opinion does not demand their enforcement. The great detail with which election procedure has been regulated does not always represent standards which the com-

munity wishes enforced. Political party organizations do not object to laxity in enforcing these laws unless they have something to gain by so doing; and if the minority party criticizes the party in power too vigorously the critical party itself may be subjected to the same unpleasant criticism when it happens to be in power. It sometimes happens that the two major parties combine to down a third party, and when this is the case election-law violations occasionally result without any punishment being meted out for the offenders. Elections are doubtless more honestly conducted now than they were before legal regulation became common. The wholesale election frauds of a generation ago are not so common as they used to be. But if election laws were more brief and were more strictly enforced, and if more adequate penalties were attached to their violation, the conduct of elections could doubtless be considerably improved in many states.⁸

Thus far we have been considering elections primarily as a method for selecting officials to operate the governmental machine. But the voter does not go to the polls merely for the purpose of electing public officials. He may likewise go there for the purpose of (1) passing upon constitutional amendments which have been proposed to him, or (2) for the purpose of ratifying an ordinary statute which the legislature has referred to him under the statutory referendum which obtains in some states, or (3) he may be asked to vote upon the recall of a public official.

The government of the United States was classified as a representative government in the first part of this book. There are, however, certain modifications of the representative principle which have been made in the last quarter-century which tend to democratize some phases of state and local government. These modifications do not seriously impair the representative feature of our government. They do indicate, nevertheless, that there has been some dissatisfaction with the operation of representative government in some of the states, and the recent modifications alluded to are by way of supplement rather than by way of displacement. These political devices, whereby the operation of government is controlled more directly by the voters, are the initiative and referendum. The initiative is a means whereby the voters may propose constitutional amendments or statutes instead of waiting for the representative

The
initiative
and
referen-
dum

⁸ That there is still room for much improvement is clear from the 1925 election scandals. See particularly White, "The Philadelphia System," *The Forum*, May, 1927, p. 678.

body to do so. The referendum is a device whereby the voters may pass upon an initiated measure or upon a measure proposed by the representative body.

The referendum has been used in connection with constitutional amendments for over a century in the states. But in recent years there has been some tendency to apply it to certain types of ordinary legislation which have been enacted by the legislature. The constitutional referendum has been considered in the chapter on state constitutions and will not be discussed here. It is an example of what is known as the compulsory referendum. The legislature has no choice as to whether it wishes to submit its proposed constitutional amendments to the voters or not. But the statutory referendum is often optional; that is, the legislature need not refer the statute to the voters for their approval unless a certain number of voters demand it in a certain formal manner. It is almost impossible to discuss the referendum without making reference at the same time to the initiative. The initiative gives a group of voters an opportunity to present certain proposals to the voters at large for their approval or disapproval. The two are usually parts of one system of direct control of government by the voters. It is difficult also to discuss the initiative and referendum as instruments of government, in general. There has been much effort and energy wasted in discussing these devices in the abstract. Usually one speaks of the initiative and referendum as applied either to constitutional amendments or to ordinary legislation, even though this is not made clear by those who write upon or discuss the subject. The arguments pro and con for one are different in many respects from what they are for the other. But there are certain problems which are common to both the constitutional and statutory initiative and referendum. They may be discussed at this point.

The
petition

The question of who shall circulate the petition on which the proposed initiative measure is printed and how to insure against fraudulent signatures is a difficult one to solve. Most states using the initiative and referendum provide that only qualified voters may circulate petitions, and several states prohibit the giving of compensation for their circulation. In a very few states petitions are not ordinarily circulated, but the voters who wish to sign them are required to come to certain designated places to do so. The registration lists are used as check lists in Washington to make sure that the persons who sign the petition are qualified voters. Prohibiting the circulation of petitions is perhaps objectionable on the

ground that it makes the use of the initiative and referendum very difficult. It has, however, the advantage of preventing fraudulent signatures. Many states using the initiative and referendum require that the signer take an oath that he is a qualified voter in the state, or that the persons circulating the petition swear that the names on the petition are the signatures of persons who are to the best of their knowledge qualified voters. Such requirements as these are usually futile since the task of checking up on the signers, even where they are required to give their addresses, is expensive, tedious and, in general, unsatisfactory.

The number of signatures which should be required for an initiative petition raises a question which has not received any uniform or satisfactory answer by the states. There is a tendency to require a larger number of signers for the constitutional initiative than for the statutory initiative. This is in keeping with the distinction which is sought to be maintained between the constituent and legislative functions. But some states require a higher number of signers for the statutory initiative than others do for the constitutional initiative and the variation in the requirements for either one of the two is bewildering. The requirement for either should be sufficiently high to discourage its use by every small group of persons who have some pet or local proposal which they wish to refer to the voters of the state. On the other hand, the requirement should not be so high that the initiative and referendum cannot be used except under extraordinary circumstances. When this much has been stated it is difficult to proceed further, unless one enters into a detailed discussion of the ends of government, and the means for carrying out those ends. Much more experimentation will be necessary before we can tell whether five or fifteen per cent of the voters should be the required number of signers on the petition for initiating a statute, initiating a constitutional amendment, or for a referendum on a legislative enactment. There is discernible a tendency to require a certain amount of geographical distribution of the signers also, in an effort to avoid too many proposals of only local importance.

Number
of
signers

One of the objections raised against the introduction of the initiative and referendum as a general device of direct government was that political parties would be weakened. It was feared that they would lose their sense of responsibility and cease to be effective agencies for the expression of public opinion. Straight party voting is not as common in state affairs as it is in national affairs, and

Effect on
parties

so far as that is true the initiative and referendum have not seriously affected the party, nor even the machine, where machines exist. Political parties are more interested in the selection of candidates in the states than they are in general programs of legislation. The initiative and referendum are usually invoked in dealing with the more general phases of state policy, and parties often are not interested on one side or the other in either initiated or referred measures, as such. In the states having the initiative and referendum the unorganized voter may, of course, force consideration of measures which the party has refused to sponsor for one reason or another.

The use of the initiative and referendum has not eliminated the machine from politics. They have been used at times to break the power of machines, but machines are sometimes in a better position to make use of the initiative to accomplish their ends than are other less well-organized groups of voters. For this reason the political boss has not been hampered seriously in his work by the introduction of these instruments of direct government. The machine can usually manipulate the mechanism of government and the public opinion behind it more adroitly than can the average group of unorganized or loosely organized voters outside of the machine.

Effect on
legisla-
tures

The initiative and referendum seem to have had little effect on the legislatures of the states wherein they are used. These bodies still continue to make as many laws as ever and to make them upon the same great variety of subjects as formerly. The fear which was voiced to the effect that legislatures would deteriorate as a result of the introduction of these instruments of direct legislation has not been justified.

Effect on
voters

The effect which the initiative and referendum would have upon the electorate was an argument which was used on both sides in the controversy preceding the introduction of these devices. The advocates of the initiative and referendum contended that the interest of the voter would be stimulated by their introduction and use. Their opponents argued that the voters were already overburdened and would take no more interest in measures proposed by the initiative or referred by the legislature than they did in other governmental matters.

The compulsory referendum does not operate differently now than it did before, and there is less interest on the part of the electorate in the compulsory than in the optional referendum. This is natural,

for the optional referendum will not be invoked in most instances unless there is some difference of opinion in the state over the wisdom of the measure under review. The voters are not interested in technical subjects nearly so much as they are in proposals which involve broad moral or economic or social issues. The turnout of the voters on such questions under the initiative and the optional referendum has been very satisfactory when compared with the vote cast at elections for candidates for office.

The effect which the initiative and referendum has had on the ballot is not as bad as was anticipated, but it is, nevertheless, quite unfortunate. The burden of electing large numbers of officers in state and local government was too great as it was. To add to this the many initiated and referred measures, many of which require considerable study before they can be understood adequately, was to ask the voter to do something which he had neither the time nor the inclination to do. It may be that if the short ballot were introduced the initiative and referendum could be used to a limited extent in an effective way; but as it is, they lose much of their merit because of the effect they have on the ballot. It is not sufficient that the voter shall be interested in measures proposed by these methods; he must also be informed.

Effect on
ballot

The recall election is an election at which the voter is asked to signify whether he wishes the present holder of an office to be superseded by another person before the regular term of the officer has expired. It is still another device whereby the people are expected actively to control government. It was not introduced into the United States until after 1900 and is now in force to some extent in only about a dozen states. Several of these states do not apply the recall to judicial officers.

The recall

Under the recall laws petitions are circulated just as they are in case of the initiative and referendum, and on these petitions the reasons for the proposed recall of the official are briefly stated. The recall is usually applicable only to elective officials, but in one state it is made applicable to appointive officers as well. It may not be instituted before a certain fixed period has elapsed after the officer has entered upon his duties. This period varies from a few days after the opening of the legislature in the case of legislators, to six months in the case of elective officials. There is a wide variation in the number of signatures required, ranging from ten to thirty-five per cent of the voters at the last election. Twenty-five per cent is not an uncommon requirement. The number of required sig-

Petitions

natures also often varies within a state, depending upon whether the recall of state or local officers is to be voted on. Provision for resignation before the election is usually made, and if the officer does not resign the election is held within thirty, sixty, or ninety days; or, if a general election is not too far distant, the recall election will be held at that time.

Recall
ballots

The first question which appears on recall ballots in several states is "Shall ——— be recalled from ——— office?" Then follows a list of the candidates who are running for the office in case the present incumbent is recalled. The recall of the present incumbent and the election to fill the vacancy thereby created are held at the same time and both choices are indicated on the same ballot. Sometimes the reasons for the recall are printed on the ballot. Some states place the name of the officer who is to be recalled in the list of candidates to be voted on although others do not.

Use of
recall

Experience with the recall in the states where it has been used indicates that it is better adapted to local than state officers. The people are better acquainted with the acts of local officers and can be interested in recalling inefficient or corrupt local officers much more easily than in the case of state officers. The state officer is more distant from the locality, and his acts do not so often touch the individual closely. Recall elections usually bring out a large vote and arouse a very considerable interest on the part of the public. It is impossible to say as yet whether this device is a very effective instrument of popular control of government or not. If the recall proved to be effective, it might be one factor which would tend to allow the lengthening of terms of office for public officers; and if this should happen, the work of government might be improved. As yet it has not been used often, and its use has, with few exceptions, been confined to local officers. It has not burdened the voter to any great extent thus far. If the recall were to be used frequently it would be open to serious objection because of the burden it would place upon the voter. It may be that the recall can be relied upon to preserve in the hands of the people an effective control of government in the movements for centralizing authority now discernible in state government. This might be particularly true in case the short-ballot principle was introduced.

One hundred years ago the mass of people were clamoring for an opportunity to participate in the work of government. What they wished primarily was the right to vote. Little by little they secured the right to vote for officers of government until now uni-

versal suffrage has almost been realized, and the many electors at present have the right to vote for large numbers of the officers of state and local government. It is curious that now when the people have this right to vote for a large number of officers, and upon many questions of policy which are submitted to them at every election, they do not avail themselves of the opportunity for which they struggled so desperately only a century ago! Why is it so?

At the time when universal manhood suffrage became the rule in the states, there were comparatively few elective officers in state and local government. The average voter knew many of them personally; the country was essentially rural; the work of government was relatively simple, and of a nature permitting anyone to perform the duties of most offices. If the duties of an office were so complicated that the average man could not perform them satisfactorily, that office was to be distrusted. The voter could perform the task of voting for these few officers intelligently and honestly. But all this has been changed in many parts of the United States. The work of government has expanded greatly and has become infinitely more complex. The governmental machine is now manned by hundreds of officers in the states, counties and cities. Almost half of the people live in cities and few voters are personally acquainted with many of the candidates for offices. When the voter goes to the polls he is presented with an armful of long strips of paper filled with a bewildering array of names of candidates for the many offices to be filled in accordance with a choice indicated by him. He walks to the election booth, lays these ballots out on the board before him, looks over the names of the candidates for President, Vice-President, governor, attorney-general, secretary of state, justices of the supreme court, and such others as may be included, and makes an X-mark after the names of those for whom he wishes to vote. He then proceeds to the numerous other officers, the county court, the municipal court, the county administrative officers, the city officers, the public service commissioners, and from ten to forty others. The voters are few indeed who vote intelligently and independently for candidates for each of these offices. When they come to the twentieth or thirtieth office the voters must resort to party designation, or the fascination of a name or its racial significance. They may rely upon some suggestion once heard that a certain candidate whose name appears upon the ballot was a "good man," and so on to the end of the list. Sometimes the voter resorts to an X-mark in the circle as a means of escape if he is voting the

Short
ballot in
early
state
govern-
ments

The
coming of
the long
ballot

The
result
of long
ballot

Indiana type of ballot. The voter next proceeds to the consideration of from one to twenty constitutional amendments or legislative enactments which have been submitted for his approval.

It is physically and mentally impossible for most voters to vote intelligently for all of the officers who are to be elected in many states. The longer the list of candidates, the more the voter has to rely on outside sources of information and help. The political party, the boss, and the machine, all thrive on the long ballot. The party would and should thrive without the long ballot; but the other two would find it more difficult, although they would not be stamped out entirely merely by the introduction of the short ballot.

Return
to short
ballot
urged

Because of the absurd lengths to which the system of elective officers has been carried in this country, there are many thinking people who are advocating a return to the short ballot of earlier days. The ballots of early state governments were short, and that principle still prevails in the national government. The introduction of the short ballot means an increase in the appointive power of the officers who are elected. The people are slow to grant this power because of the fear that their selection may not have been wise. This is but a confession of the weakness of representative government as it now exists. However, if the voter has to vote for but a few officers it may well be that he can choose those few so intelligently that the persons so chosen can be trusted with an extensive power of appointment. If the recall be coupled with the short ballot so as to enable the voters to remove officials who abuse their increased powers, the burden of the voters will be lightened materially and the government will work at least as efficiently as it now does. The probability is that it will work more efficiently than it does at present. The people cannot choose many officers and do it well, and they are not doing it as well as it could and should be done. Until they are content to choose only a few, they cannot hope to select candidates who can be intrusted with considerable power as the representatives of the people. With the adoption of the short ballot should also come longer terms of office, which can be introduced without any danger to representative government. Thus the character of the work of the government, much of which is technical, could be improved. In so far as that is true, the appointive principle should be given broader application, and the terms of office should be lengthened where the elective principle is still applied. The relation of the short ballot to proposed reorganizations of the state administration will be discussed more at length in a subsequent chapter.

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CHAPTER SIX

THE LEGISLATURE

Nature of
the legis-
lative
function

IT WAS pointed out in the introductory chapter of this book that the fundamental process in government is that of determining the policies of the state. Since the state exists to perform certain services for its citizens, the first step in performing its function is to decide what services are to be undertaken by government and how they are to be accomplished. This function of determining policies, as was then suggested, is performed primarily by the legislative branch of government.

The devel-
opment of
legisla-
tion

In early days, when autocratic governments prevailed in Europe, the policy of the state was the will of the autocrat, and the power that determined policies was identical with that which carried them into effect. The early assemblies of the people or their representatives in England, which contained the germ of our modern legislatures, did not consciously determine policies, but met to express their opinions upon policies inaugurated by the king and to petition for the recognition of popular rights. The resulting legislation, if any was forthcoming, took the form of a royal act known variously as an edict, constitution, charter, or statute, sometimes drawn up after the assembly had dissolved. Such statutes usually were in the nature of confirmations of rights presumed already to be in existence. As time went on, expressions of criticism and of positive proposal of measures became more numerous, and the voice of Parliament assumed a more authoritative tone. It was not until modern times, however, that Parliament actually legislated. Indeed, a reminder of the historic origins of legislation is preserved in the enacting clause prefixed to every act of Parliament which reads:

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:"

In spite of this formula, legislation to-day in England, as well as in other countries under popular government, rests upon the au-

thority of the people as expressed through their elected representatives.

In modern parliamentary governments all important measures of policy are still proposed by the executive branch of government to the parliament. It is the function of the legislative body to criticise and ultimately to approve or reject the measures thus proposed. Besides legislation thus enacted, the executive branch issues, under the authority conferred by Parliament, supplementary legislation under the name of orders-in-council. It must be remembered, however, that the executive which now proposes legislation is not an autocratic monarch but a ministry made up of leaders of the legislative body itself.

If the doctrine of the separation of powers were followed to its logical conclusion, the legislative function would be performed exclusively by the legislature, and in turn, that body would perform no other function. In the United States where the attempt has been made to adhere more strictly than in other countries to the doctrine of the separation of powers, a greater proportion of the work of policy-determining, or legislation, has been left to the legislature than is true elsewhere. But, nevertheless, there has been in state as well as in federal government a considerable departure from the logical demands of the doctrine. The application of the theory of checks and balances has resulted in giving to other departments and agencies some participation in what may properly be called the legislative function. It may be of interest to observe the extent to which this participation is carried.

In the first place, it has been discovered in the chapter upon state constitutions that the electorate itself at the ballot box, and with the assistance of the constitutional convention, exercises what is called the constituent function in making constitutions. The making of constitutions is policy-forming of a very fundamental kind, since it expresses policy with respect to the basic institutions of government, and is therefore a kind of legislation. In the second place, it will be found in a subsequent chapter that officers of the executive branch, acting under the name of the "ordinance power" and laying down what are known as administrative "rules and regulations," perform a work which is essentially legislative in character. Finally, in examining the work of the courts, it will be found that under certain circumstances the judges actually make law, although they sometimes protest that they do not do so. So, then, it appears that the electorate, the executive branch and the courts sometimes partici-

The legis-
lative
function
distributed

pate in performing the legislative function. Nevertheless, it may still be said that the legislative function is, in the commonwealths of the United States, chiefly performed by the legislative branch of government, the legislature.

Work of
legisla-
tures
analyzed:

If we turn to this chief policy-forming branch of government and analyze its activities, it will be found that they fall into a few rather clearly distinguishable categories. These may be designated as:

1. Constituent
2. Law-making
3. Directoral
4. Non-legislative.

1. Constit-
uent
function

Proceeding to consider in some detail the nature of these several lines of activity, the constituent function may be defined as that of making and altering the constitution. In the performance of this function the legislature plays an important rôle. Whenever a new constitution is made in a territory preparatory to its admission to statehood, and subsequently when an extensive revision of the fundamental law of a state is to be undertaken, the legislature is called upon to act. In a number of the states it is required by the constitution that at stated intervals the voters shall be called upon to express themselves upon the question of holding a convention to consider a revision of the existing constitution. If upon such occasion the popular vote is in the affirmative, it then becomes the duty of the legislature to prescribe by statute the details of time, place and structure of the convention, as well as the manner of submitting the results of its labors to the electors for ratification or rejection.

If the constitution contains no provision for such periodic referendum upon the question of holding a convention, then under the constitutions of some of the states, the legislature may at its discretion place the question before the voters to obtain an expression of their desires as to the holding of a convention. In still other states where no specific mandate to consult the electors exists, the calling of a convention depends entirely upon the pleasure of the legislature. In either of the last two above-mentioned cases, the failure of the legislature to act blocks effectually the way to the holding of a convention.

If it seems desirable to amend a constitution in any particular without recourse to a convention, it is again true in more than half of the states that this may be accomplished only when amendments

are proposed by act of the legislature. Only in those states where an amendment may be proposed by popular initiative petition can the constituent function be performed without the participation of the legislature. It appears, then, that state legislatures play an important part in the work of making and changing constitutions, and that this is policy-forming of a most important kind.

A second function of the legislature is that of law-making. This statement suggests the question: What is law? To answer briefly, and for our present purpose, sufficiently, it may be said that law is that body of rules and principles prescribing the rights and duties of individuals in their relations with one another and with the government, which the courts will recognize and enforce.

2. Law-making function

If these rules and principles are examined with respect to the sources from which they are derived, it will be found that the chief source throughout our legal history has been judicial decisions and precedents. From the slow process of deciding concrete cases as they arise in the life of the people, in the light of the precedents furnished by other cases already decided, there has been gradually built up a body of rules and principles known as the Common Law. It is not with this body of law that we are now concerned, since that will be considered in connection with the courts through whose activities it has been developed. We are here concerned with a second source of law, the statutes enacted by legislative bodies. The term *statute* is the generic name applied to all acts of legislation.

Law has been defined as a body of rules and principles. It is customary among students of jurisprudence to distinguish between legal principles themselves and the sources, whether judicial precedent or statute, wherein the principle is laid down. They distinguish between "law" and "sources of law." Statutes, then, as well as judicial precedents, are sources of law. We may, however, for the sake of convenience, abandon the strictly scientific and technical distinction between law and sources of law and conform to a more popular usage, by speaking of the statutes which prescribe rights and duties of individuals as law.

If the acts at any session of a legislature are examined with respect to their subject matter, it will be discovered that a considerable proportion of them does not conform at all to the definition of law as above laid down. Among them will be found acts determining what services shall be undertaken by the state, what shall be the structure of the governmental machinery to be made use of in performing these services, the methods which shall be employed,

3. Directional function

what amounts of money shall be appropriated for the purposes, and how such funds shall be procured.

In fact it will be discovered that by far the greater part of the legislation enacted is of "directoral" rather than of a "law-making" character. In performing this kind of work the legislature is acting very like the board of directors of a business corporation. Hence the name—"directoral."

Pursuing this analogy further, the citizens may be likened to the stockholders of a corporation for whom the directors serve as representatives in making plans and taking measures to see that the plans thus formulated are put into execution. It will be perceived at once that this is something quite different from the task of defining the rights and duties of individuals in their relations with each other and with the government. It may be observed in passing that the work of prescribing the organization of the police and of the courts, and the rules of procedure for the enforcement of these rights and duties would, however, be directoral rather than law-making in character.

Statutes
vs. laws

Like other acts of legislation, these directoral acts are statutes; but they are not laws. It is unfortunate that the term "laws" has been used synonymously with "statutes" and employed to designate all acts of legislation, since this tends to confuse distinctly different ideas. One characteristic of laws is that they are general; that is, they are intended to apply to all cases or all of a given class to which they could be made to apply. They are likewise intended to apply to a succession of events over a period of time. Directoral statutes, on the other hand, are sometimes general but are more often intended to apply only to a particular case or to a single act. It will be found that directoral acts of legislation relating to specific cases, such, for example, as prescribing the particular material to be used in the construction of a bridge, or legalizing some act of an officer, sometimes approach the character of acts of administration rather than of legislation. Indeed, the border line between legislation and administration at such points becomes very shadowy and indistinct.

Organ of
public
opinion

Closely connected with both the law-making and the directoral work of legislatures, but especially with the latter, is a phase of legislative activity which is considered by some writers as a distinct function of the legislature: that of acting as an organ for the expression of public opinion. The development of legislatures in this country has not been such as to emphasize this work and to elevate

it to a place of prominence. In the earlier years of Parliament, as has been suggested, this serving as a mouthpiece for the expression of public opinion was the sole function of the assembly, since the monarch was free to disregard its suggestions. It has been pointed out above that the function of the ordinary member of Parliament to-day is not to propose legislation but to voice public opinion upon measures introduced by the ministry.

Subjecting the proposals of the ministry to merciless criticism and possible defeat is a most effective way of bringing the force of public opinion to bear upon those intrusted with the powers of government. Another method of creating, formulating, and giving voice to public opinion, is the practice of permitting members to ask questions calculated either to compel the majority to declare its policy on questions of the day, or to make clear to the country the weakness of the position of the majority. The answer of the majority, if not satisfactory, gives ammunition for attack in debate, and may lead to the offering of resolutions of criticism, or of want of confidence in the ministry. Under the parliamentary system, a vote adverse to the ministry on such an occasion results in their resignation and the accession of the opposite party to power. A general election may even be called to give an opportunity for the voters to impress upon Parliament their views upon the question at issue.

In governments constituted as are those of the United States and the several states where those intrusted with public power are chosen for a fixed term, criticism by the minority cannot have such instant and perhaps fatal effect upon the tenure of those in office. Consequently the function of the legislature as an organ of public opinion as distinguished from that of law-making and of direction, has never attained robust proportions.

Lastly, legislative bodies are called upon to perform certain functions of a nonlegislative character. Chief among these are the duties: first, of acting in the capacity of an executive council to confirm treaties, as well as executive appointments and removals; and second, of acting in a judicial capacity in impeachment proceedings.

As an executive council the state legislature, naturally, has no function in connection with treaties. In a considerable number of states appointments by the governor must receive the approval of the Senate. In some of these states removals must likewise be approved by the same body.

4. Non-legislative functions:

(a) Executive: appointment and removal

(b) Judicial: impeachment

Another nonlegislative function, and one of a judicial character which the legislature is occasionally called upon to perform is that of impeachment. Impeachment is a process whereby civil officers, either of the executive or judicial branches of government, may be removed from office for criminal or other serious misconduct in office after formal charges have been preferred and hearing given. Throughout the English-speaking world it is the privilege of the lower house of the legislature to institute impeachment proceedings. The state of Nebraska departs from this order by placing the power in the hands of the two houses sitting in joint session.

If a member of the lower house believes that some officer of the state has misconducted himself in office, he may introduce a resolution in the House directing that a committee be appointed to investigate the conduct of the official involved. If the resolution is approved the investigating committee thus created proceeds to gather information regarding the conduct of the person in question. When the committee has completed its investigation it may recommend in its report to the House either that they believe that the official should be prosecuted in an impeachment trial or that sufficient grounds do not appear for proceeding further. If the House accepts the report, formal charges of crime, misconduct, or neglect of duty, known as "articles of impeachment," are prepared and adopted. These are sent to the Senate, together with a request that that body sitting as a court proceed to try the accused upon the charges contained in the articles of impeachment.

The Senate then fixes a date for the trial and gives notice to the accused, informing him of the charges preferred against him and commanding him to appear for trial at the time fixed. The lower house ordinarily chooses a committee of managers who conduct the prosecution of the trial for it. The proceedings before the two houses are in their nature judicial, and may be compared, in a general way, to indictment by grand jury and trial before a court as practiced in ordinary criminal cases. The accused person may bring witnesses, employ lawyers, and prepare a defense in the same way as if he were being tried in an ordinary court.

It is the general rule that a two-thirds majority of the Senate is necessary to convict. In New York the justices of the Court of Appeals, the state's highest court, sit with the Senate in hearing impeachment cases. In several states the chief justice presides over the Senate in such trials and in Nebraska trials are held before the supreme court. No impeachment of officials is provided for in

Oregon, but it is prescribed that incompetence, corruption, malfeasance or delinquency in office shall be dealt with through the courts in the same way as criminal offenses.

Punishment following impeachment ordinarily consists in removal from office only, though disqualification from holding further office is sometimes added. The guilty party is, however, still subject to arrest, trial and punishment according to law if the offense be a criminal one.

Impeachment has been pointed to with some satisfaction by many writers, but as a practical means of ridding the state of an unworthy officer it has been found to be an ineffective weapon. It is too slow to set in motion and too clumsy in operation to be of much practical service. Only under extraordinary circumstances would a special session be called to consider charges. Hence impeachment proceedings are not likely to be instituted except during a regular session of the legislature. In fact, the process is resorted to only occasionally and usually in aggravated cases. Few impeachment trials are held and still fewer convictions secured.

Having analyzed the nature of the tasks which legislative bodies in general, and the legislatures of the states in particular, are called upon to perform, a study of the legislature itself may next be undertaken. It may be conveniently accomplished by taking up in turn its structure and organization, the scope of its powers and functions, and the procedure under which it operates.

In perhaps a majority of the states the legislature is called the "general assembly." In Oregon the term "legislative assembly" is substituted, and in Massachusetts and New Hampshire the two houses are collectively known as the "General Court."

In every state of the union the legislature consists of two houses. The upper house is everywhere in this country called the Senate, while the lower branch is known in most states as the House of Representatives. In New York and Wisconsin the lower house is called the Assembly, and in Maryland and Virginia the historic name, House of Delegates, is still applied to that branch. This general adoption of the bicameral plan was due to several reasons, the first among which is historical. Those who framed the first state constitutions had before them examples of legislative bodies thus constituted in most of the colonies, and in the background the historic example of the two houses of the Parliament in England. In the second place, the presence of two bodies gave play to the prevailing conviction that class distinctions should be reflected in legislative

The legis-
lature
bicameral,
due to:
1. His-
torical
precedent

2. Class
distinctions

bodies. In England the distinction between classes found expression in the separation into two houses of the nobles and the commoners. In the absence of such social class distinctions as a basis of constituting two branches, the distinction of property was substituted. In South Carolina, for example, it was provided in the constitution of 1790, that the Senate should be composed of thirty-seven members holding office for four years. Each senator must, if a resident of the district, be an owner of land of the value of £300, or, if a non-resident, of the value of £1000. The House of Representatives was composed of 121 members elected for two years; and each member, if a resident of the district, was required to possess real estate of the value of 500 acres and ten negroes, or if a nonresident, to own real estate of the value of £500.

3. Federal
analogy

In the third place, after 1787, the bicameral arrangement found additional support from the analogy of the federal Constitution where the bicameral plan had been finally decided upon as a means of securing representation based upon both states and population.

Acting under such influences, all but three of the earliest group of states, Georgia, Pennsylvania and Vermont, organized their legislatures in bicameral form; but within little more than half a century the last unicameral legislature had ceased to exist.

The wave of democratic sentiment which led to the general adoption of manhood suffrage swept away the last vestiges of the distinctions based on property. The bicameral legislature still remains, but save for occasional but inconsequential variations in age qualifications, the only formal distinctions now remaining between the houses arise from the smaller size of the Senate, the longer and overlapping terms of senators in many states, and some variations in powers conferred. It is a fact, however, that on account of these distinctions which favor the upper house, as well as for historic reasons, greater honor and prestige attach everywhere to seats in the Senate.

The
bicameral
plan

In the lapse of a century the bicameral system became so firmly rooted in the political thinking of the public that there came to be no doubt in their minds that such an arrangement was necessary to the process of legislation. Within the present century there has appeared a disposition to question the efficacy of having two houses in the state legislatures. Consequently it seems desirable to examine the question upon its merits.

Arguments for the bicameral organization have commonly been based, in the first place, upon the opportunity which it affords for

representation of both territorial areas and population. The influence of the federal analogy is, of course, in evidence here. The federal idea is carried out in New Jersey, Maryland, South Carolina and Montana, by giving each county equal representation in the Senate, and in Rhode Island by giving equal representation in the same body to townships. In each of these states representation in the lower house is based upon considerations of population. In Connecticut conditions are reversed, the Senate being constituted according to population, while the lower house has as its basis territorial divisions of the state. Such arrangements can be justified only on the assumption that counties or townships have such an equality of status and, at the same time, divergence of interests as to demand special representation. Neither an investigation of actual conditions in these subdivisions nor of the acts of legislatures will tend to support any such assumption. The fact is that only on very rare occasions does a matter come up for legislative consideration which involves conflicting interests of neighboring counties or townships.

A second argument for the bicameral system, stated negatively and in terms of the doctrine of checks and balances, is that under this plan each house constitutes a check upon the other to prevent hasty and ill-considered legislation. Stated in positive terms it is said that by requiring that every bill secure the assent of two houses there is assured greater care and deliberation in its consideration, and hence a higher standard of legislation. This argument, however, does not appear to be supported by the facts of the matter.

It must be borne in mind that delay of final action upon bills does not necessarily imply careful consideration. Such delay usually means slight consideration until the last moment, followed by hasty action and a repetition of the same in the second house. Nor does consideration by two houses necessarily mean double consideration. It has been discovered upon investigation that a decided tendency exists for bills which have passed one house to pass the second as a matter of course with little or no change. The extent to which this is true depends upon the political methods employed in the particular state. In a study made some years since in New York of the effects of the bicameral system upon legislation, it was found that in the period under consideration, less than twenty per cent of the bills which passed one house were defeated in the second. It was further found that of all bills passing one house, only fifteen per cent were amended in the second. It is perhaps true that the course of legisla-

tion is more completely dominated by the majority leaders of the two houses working in unison in New York than is the case in most states. In the legislative session of 1910 in the same state, out of 2156 bills passed by one or other of the houses, 230, or less than eleven per cent of the total number, were defeated in the second house.

In Illinois, where party leaders exercise a somewhat lesser degree of control over legislation, it was found that over a period covering four successive legislative sessions, as many as twenty per cent of the bills passing one house did not pass the second. It was found, however, that the failure of a considerable proportion was due to failure to take any action whatever rather than to a negative vote by the second house.

It is further contended that any advantages gained by consideration by a second house are overcome by the delays ensuing, by the failure to pass desired acts, and by the opportunity offered for evasion of responsibility for the results.

Arguments
for the
unicameral
plan

Those who have suggested the desirability of unicameral legislatures base their advocacy upon the advantages offered by the greater simplicity of organization and definiteness of fixing of responsibility. They point out the fact that under the present arrangement it is difficult and sometimes impossible for the public to follow the progress of measures through the mazes of procedure and to fix responsibility for results. The complexity and number of steps necessarily slows down the legislative process without corresponding advantage. Investigation has corroborated the impression of observers that slowness in reaching a legislative decision usually does not indicate deliberate consideration so much as procrastination. Evasion of responsibility for action or inaction is made easy in a sort of legislative shell game in which a measure is passed rapidly back and forth between the houses under pretense of minor amendments, until the interested citizen is quite unable to locate it, when, perhaps, it has come quietly to rest in the pigeonholes of a committee. The result is that a meritorious bill is delayed, whether by deliberate intention or otherwise, and fails to reach final vote. It is not uncommon for one house to pass a popular but unwise measure leaving to the second house the dilemma of passing an undesirable act or of incurring popular disapproval. By disagreeing upon some minor point in a bill it is possible to have it sent to conference committee. There behind closed doors the bill may be altered in a

material way, and reported back and passed without due consideration in the confusion of the closing hours of the session.

To those who urge the usefulness of a second house as a preventive of haste in action, it is replied that danger of undue haste may be better met by judicious modifications of the rules of procedure. Unicameral legislatures are in existence in all but two of the Canadian provinces; the legislatures of Norway, Jugo-Slavia and Bulgaria, are organized in this form, and the legislatures of all the cantons of Switzerland are unicameral in organization. Likewise the great majority of the largest cities of the United States, each having a population larger than several of the states, have substituted the single for the double-chambered council. Within the last twenty years the governors of three states have in their messages advocated this change for their states, and a legislative committee of the Nebraska legislature has suggested the change. The question has been submitted to popular referendum in Arizona, Oklahoma and Oregon, and although the proposal did not secure a majority, the large vote which it received indicated that a considerable body of opinion exists in favor of this innovation. It may safely be said, then, that some points of distinct advantage exist in the unicameral plan and that some time-honored claims of superiority for the bicameral plan have been shown by scientific investigation to be unfounded. But notwithstanding all this the public is so deeply convinced of the fundamental rightness of the bicameral form that any general departure from it need not be looked for in the immediate future. Simplification of the structure of legislative bodies in the states must be sought within the houses themselves.

Distinctions exist in legislatures between upper and lower houses, both with respect to size and term of office. The number of members composing these bodies varies widely, but in every state the Senate is a smaller body than the lower house. In many cases the exact number of members is determined in the constitution. On the other hand, in several states, a maximum to which the legislature may increase its own number is fixed, and in a few cases a minimum number is fixed. The Senate varies from seventeen in Delaware and Nevada to sixty-seven in Minnesota, and the lower house from thirty-five in both Delaware and Arizona to four hundred and eighteen in New Hampshire. The average number in the state Senates is approximately forty and in the lower house about one hundred. It will be found that the lower house rises to the largest proportions in the northeastern states, and especially in New Eng-

Distinc-
tions
between
the
houses

I. Size

land where the basis of representation is the town. The lower house in Pennsylvania, Massachusetts, Vermont, Connecticut and New Hampshire rises above two hundred, they having respectively two hundred and eight, two hundred and forty, two hundred and forty-seven, two hundred and sixty-two, and four hundred and eighteen members. Aside from Delaware, the smallest of the lower houses are found in the more sparsely populated far-western states.

It is believed by many that the size of the houses is entirely too great and that it should be reduced. It is probably true that a house of more than a hundred members is unduly large, and that in a majority of the states membership of the larger house might advantageously be reduced below that number. It must be borne in mind, however, that the function of a legislature is representative and that the number must therefore be large enough to reflect a wide variety of interests and viewpoints.

The suggestion of a governor of Kansas, made a decade or more ago, was an extreme proposal for the reduction of legislative size. Inspired no doubt by the current popularity of the commission form of government for cities, he proposed that the work of legislation be turned over to a small single chamber consisting of one or two members from each Congressional district elected for a long term and devoting their whole time to their task. It is evident that by such plan the representative character of the body is sacrificed and an effort made to attain standards of efficiency of an administrative rather than a legislative character.

2. Term

At the time of the Revolution annual elections were the rule, and this was adhered to for selecting members of the lower house in all of the original states except South Carolina, where a two-year term was provided for from the beginning. In earlier times when the number of voters was small and the electoral process simple, it was easy to adhere to the more democratic practice of annual elections; but later with a much larger and less homogeneous population and with a complicated system of primaries and elections, annual elections became a burden. Consequently the original custom was departed from under later constitutions, until at present New York and New Jersey alone retain annual elections for the lower house of their legislatures. Alabama, Louisiana, Maryland and Mississippi elect their Representatives for a four-year term, while in the remaining forty-two states a two-year term prevails.

From the beginning in certain states there was accorded to the Senate the distinction of a longer term. The original constitutions

of New York and of Virginia created a Senate elected for four years. In Maryland, the term was extended to five and later to six years. In not less than thirty states the senatorial term is now four years, and nowhere is it less than two.

Another distinction between Senate and House sometimes appearing is that the former is a continuing body. The early constitutions of New York and Virginia above referred to provided that one-fourth of the Senators should retire each year. Delaware, in 1792, upon introducing a senatorial term of three years, stipulated that one-third of the senators should retire annually; and Maryland, in 1837, provided for the retirement of one-third every two years. At the present time a large proportion of the states having the four-year term provide for partial renewal every two years.

3. Con-
tinuous
character

An actual comparison of legislative chambers has convinced observers that there is generally found in state Senates, if not greater ability, at least a poise and saneness of view and a grasp of legislative problems which distinguish their sessions from those of the lower house, and which may be ascribed in some measure at least to the longer term and the continuing character of their service.

The subject of legislative pay is one of interest to the individual members, though not of great moment to the citizens in general, since its total does not bulk large in the cost of government. The early idea that legislative service, being not only a duty but an honor, should be without remuneration long since gave way to the practice of paid service. Unfortunately there is no evidence to indicate that the giving of compensation has improved the quality of the bodies. The rate of pay has not been sufficient to attract the most desirable class of citizens, so that that class is secured, if at all, only from a sense of duty or as a preliminary step to political advancement to some higher goal.

Compensa-
tion of
members

1. Per
term

The states are almost equally divided between two plans of remuneration. In somewhat less than half the states members are paid a fixed sum per year, session or biennium. These sums range from \$200 per biennium in New Hampshire to \$3000 in Illinois. In several cases some additional compensation is allowed in case of extra sessions. It should be remarked that the larger compensation usually is allowed in the states where there is no limit on the length of the session. The second method of fixing legislative compensation is to pay a *per diem* allowance for actual attendance, which ranges from \$3 in Oregon and Kansas to \$12 in Wyoming.

2. *Per
diem*

Not far removed from the question of compensation are the ques-

Frequency
of
sessions

tions of both the frequency and the length of sessions. In the earlier days annual sessions were assumed as a matter of course, but with the lapse of years regular sessions have come to be held only biennially in all but seven states. In Massachusetts, Rhode Island, South Carolina, Georgia, New York and New Jersey, annual sessions are still held, while in Alabama the legislature meets regularly but once in four years. It is interesting to note that in Alabama it has been found desirable to hold at least one special session in each four-year interval since the four-year plan was adopted. It will be noticed that in the first four states, in spite of the fact that sessions are held annually, elections are held biennially. Thus each legislator is assured of participation in at least two regular sessions. It is true, however, that in every state special sessions may be called, and that, though public opinion is as a rule averse to the holding of such sessions save in an emergency, they are of rather frequent occurrence.

Length
of
sessions

Not only has there been a trend in the direction of biennial rather than annual sessions, but there has likewise been a tendency to place a limit on the duration of legislative sessions. In this respect the major differentiation among states is one between the states where there is and where there is not a limit fixed by the constitution upon the duration of sessions. In seventeen, or almost exactly one-third of the states, situated for the most part in the northeastern and north-central regions, no limit whatever is placed upon the length of sessions. Elsewhere there is a limit ranging from forty days in Oregon and Wyoming to ninety days in Maryland and Minnesota, and five months in Connecticut, the prevailing limit being sixty days. Curiously enough the smallest and the largest *per diem* allowance is paid in the two states where the length of sessions is most restricted. It will also be found that, except in two cases, the *per diem* plan is in force in the states where there is some limit placed on the length of sessions, and that in the remaining two the rate *per diem* is not of an amount to encourage prolonged sessions.

In most of the states where there is a time limit upon sessions the command to cease is peremptory, but in a few cases it is conditional. In Virginia, a sixty-day session may be prolonged thirty days by a three-fifths vote of the members. In Texas, if the sixty-day limit is exceeded, the *per diem* for overtime is reduced to two dollars; while in certain others such as Rhode Island and South Carolina, the compensation ceases altogether at the end of the first sixty days. In

such cases it has been found unnecessary to resort to an absolute time limit to secure the desired result.

In California and West Virginia the device of what is known as the "split session" has been introduced. In these states the legislature remains in session a fixed number of days, then takes an enforced recess of a prescribed period and again reconvenes to complete its session. Split sessions

In all states having biennial or quadrennial sessions except the four, Virginia, Kentucky, Mississippi and Louisiana, the legislature convenes in the odd-numbered years, and, except in the states of Georgia, Florida and Louisiana, all regular sessions of whatever frequency begin in the month of January. The result is that in the months of January and February of every odd-numbered year legislatures are in session at the capitals of no less than forty-one states. At the same time a quadrennial session may be in progress in Alabama and perhaps special sessions are occurring in some of the states in addition to the regular sessions. In the even years legislative activity is regularly restricted to the four states above mentioned. Date of sessions

The apportionment of members of legislative bodies in a modern complex civilization presents a perplexing problem. In the distribution of members of state legislatures the two factors, territory and population, were at the beginning taken as the basis of apportionment. The ideal of popular government is that when a representative assembly is substituted for direct democracy, the representative body should be a perfect mirror of the various shades of interest and opinion existent in the community. In a simple homogeneous society such as existed in the American colonies and in the earlier days of the Middle West, the chief differences in group interests were as between localities. Apportionment of members upon a territorial basis, then, according to population gave an almost ideal result. With the development of a complex social system of varying and conflicting interests,—industrial, commercial, capitalistic, racial and religious, as well as agricultural,—territorial apportionment became a system which was far from the ideal of perfect representation. Legislative apportionment

In such a society it becomes true that a farmer elected to the legislature from County A more truly represents by word and vote the interests of the farmer in County B than does the manager of a public utility plant elected in County B. Furthermore, the farmer, if he prosper, may become interested in a local canning factory which cans his vegetables, a stockholder in the local bank which makes 1. By territorial divisions

loans to local farmers, and perhaps he becomes a bondholder of the railroad which hauls his cattle to market. Again, the labor organization to which an artisan belongs may join in the organization of a labor bank and the mechanic become a stockholder and a depositor. Thereby he becomes a capitalist. Thus, for either the farmer or the mechanic a situation may easily arise in connection with some question of public policy wherein he may find himself torn by a conflict of his several interests. Hence attempts to solve the problem of representation by interests have been faced by the fact that individuals cannot in such a society be assigned offhand to particular interest groups.

Attempts have been made to work out schemes of representation which will more perfectly reflect the opinions of interest groups. Systems of cumulative voting, such as exist in the triple-member districts in Illinois, proportional representation, and likewise the soviet system of Russia based on occupation groups, seek by very different means to mitigate or avoid the inequities of the prevailing system of representation. Practical difficulties growing out of the complexities of the remedies proposed and lack of popular appreciation of the problem, have thus far prevented wide adoption of any of these plans. The result is that territory and population remain in the American states the basis of legislative apportionment, on the assumption that in the long run minorities will, under this plan, secure representation in a sufficient number of districts to protect their interests.

It is quite natural that existing areas of local government in the states should be widely employed as the territorial basis of the distribution of members of the legislature. In New England where the town is coeval with the colony, if not actually of earlier origin, it is that area that is commonly adopted as the basis. Elsewhere throughout the country the county is ordinarily the unit employed.

In the apportionment of the membership of the lower house in New England, Vermont carries the principle of town representation to its logical conclusion by giving to every town in the state one representative, and only one. Rhode Island assures to each at least one representative, and additional members on a basis of population. Connecticut assigns to each town one member and also to certain others which are either older or larger than the remainder a second representative. This produces the absurd result that the three smallest towns which had in 1920 a combined population of 1,197, have equal representation with the three largest cities having a combined

population of 444,128. In New Hampshire the smaller towns are grouped into representative districts, but with the curious provision that the representative from the district shall be assigned to the several towns in rotation. In Maine and Massachusetts alone towns are grouped into representative districts on a simple basis of population.

Elsewhere throughout the country the county is the unit of representation in the lower house. In a considerable number of states county autonomy is recognized to the extent of assigning to each at least one representative. Additional members in these states, and all representatives in other states, are apportioned to counties or other representative districts according to population. It is commonly provided that where a county has more than a single representative, that area shall be divided into representative districts; but in certain cases, notably in Iowa, New Jersey, and Ohio, the county representation is elected on a general ticket. In certain states where there is great variation in population among counties it has been found necessary, in order to avoid the alternative evils of too large a body or too great inequality of representation, to group the smaller counties for purposes of representation. In perhaps a dozen cases the whole state is divided into representative districts rather strictly upon a basis of population, but even in such cases it is almost always stipulated that counties, or in New England, towns, shall not be divided.

In the earlier days the apportionment of members was sometimes fixed in the constitution and hence was comparatively inflexible; and this is the explanation of some of the more glaring cases of inequity noted above. Where population is made the principal basis of distribution the apportionment is more commonly left to the legislature. Sometimes the injunction is added that the districts shall be composed of "contiguous territory," and that they shall be as "compact as practicable." In a number of states the constitution requires a reapportionment at prescribed intervals.

A feature of legislative apportionment is the frequent tendency to discriminate against cities and in favor of rural districts. The rural population was originally in a majority in all states, and has watched with jealousy the increasing wealth and economic power of the cities. While still in a majority the country areas have sought to perpetuate their domination in the legislature by inserting in the constitution provisions limiting the representation of the cities. The reasons advanced in justification of such discriminations, when any justification is attempted, are the alleged corruption or radicalism of

2. By
population

the cities as compared with the sober and virtuous rural population. It is contended that populations which have made such conspicuous failures of their local government in many cases should not be allowed to dominate the political affairs of the state. The injustice of such sweeping conclusions has been demonstrated, but the rural forces in many cases continue to hold the field.

It may be asserted that in the states the Senate is, on the whole, apportioned more strictly on a basis of population than is the House of Representatives. Among the several states it will be found that the widest departures from a strict basis of population occur in the older ones where historic forces are most strongly operative. In Rhode Island, all towns and cities find equal representation in the Senate, while in New Jersey the counties are equally represented in this body. This provision produces the result in Rhode Island that the smallest town in the state, possessing in 1925 but 407 inhabitants, has equal representation with the city of Providence which had in the same year a population of 267,000.

In certain other states, including Maryland and South Carolina, each county must have at least one senator, however small its population. Elsewhere throughout the country it is customary to create senatorial districts on a basis of population, though county lines are adhered to as far as practicable.

Although it is the whole population which is usually made one of the bases of apportionment, in certain states either the white population, the number of citizens, or the number of legal voters is substituted as the basis. These substitutions ordinarily work to the disadvantage of the cities, since it is there that aliens and other non-voters are most numerous.

These inequalities are most glaring where a single large city includes a large proportion of a state's total population. Such states are New York, Illinois, Maryland, Delaware and Rhode Island. In New York, with a fixed total membership for the Assembly, a provision of the constitution gives to each county in the state, save one, at least one representative, and stipulates that no county shall have more than one-third and that no two contiguous counties shall have more than one-half of the membership of the Senate. These prescriptions are, of course, aimed at the city of New York which includes approximately one-half of the state's population. Illinois discriminates against Cook County, which is virtually coterminous with Chicago, to the extent that it is allowed but fifty-seven representatives, whereas its population entitles it to not less than sixty-

nine. In Maryland and Rhode Island, the cities of Baltimore and Providence are the victims of discrimination. The former city, including substantially fifty per cent of the whole population of the state, is allowed but fifteen per cent of the membership of the Senate and twenty-five per cent of the House. Providence, with approximately forty per cent of the population of the state, besides having the same representation in the Senate as the smallest township, has but one-fourth of the total membership of the House. In New Jersey, the provision giving to the counties equal representation in the Senate discriminates greatly against the larger cities of the state.

The chief reason for vesting the power of apportionment in the legislature has been to facilitate the process of reapportionment to correspond with the shifting of population. It was discovered early in our history, however, that by the process known as "gerrymandering" it is possible in apportioning members of legislative bodies to discriminate greatly against a minority party, and to secure to a dominant party representation quite disproportionate to its voting strength. The gerrymander is the arrangement of the boundaries of legislative districts in such a way as to give to the dominant party a safe majority in as many districts as possible, and at the same time to consolidate the minority vote in a few districts where their majority will secure for them a minimum number of representatives. The result of this practice is that to-day in many states the dominant party is grossly over-represented in one or both branches of the legislature. A glance at a map on which the legislative districts are indicated will reveal districts of such fantastic outlines that it is evident that such areas can have no possible community of interest which distinguishes them from the surrounding districts with which their boundaries are intertwined.

The gerrymander

The method of nomination of legislators usually follows that employed in the nomination of local officers. Mass meetings of the voters of township or county, dominated usually by local political leaders, were long the favorite method of nomination in rural districts. In districts of greater population density or greater territorial extent, delegate conventions were in course of time substituted for the more direct method. With the coming of the direct-primary in the early years of the present century, this new system spread rapidly, until at present it prevails in all but three states of the Union. As long as United States Senators were elected by the legislatures, the control of nominating conventions in the several legislative districts constituted the first objective of aspirants for senatorial

Nomination

honors. The result was that at no point did the old nominating convention descend to greater depths of corruption and abuse than in its application to members of legislatures. It is perhaps an open question since the removal of the election of Senators from the legislative halls, whether the direct primary is the system best suited to secure legislators who will reflect the views of their constituents and at the same time bring to problems of state-wide interest a breadth of vision and soundness of judgment which such larger questions deserve.

Cumulative
voting

To remedy that effect of the system of plurality election which tends to give to a dominant party disproportionate power, even in the absence of a gerrymander, the system known as cumulative voting has been devised. Under this plan the state is divided into a number of legislative districts equal to the number of Senators; and in each of these is elected, besides a Senator, three Representatives. Each voter is allowed three votes for Representative. These he may cast for three candidates in the ordinary manner. He may, however, give to one candidate two votes and to another, one; or he may, if he so desire, concentrate all his votes upon one candidate.

A half-century ago this system was introduced into Illinois to meet a local condition under which the northern part of the state returned a solid Republican delegation, while the south sent an equally solid Democratic delegation. Thus was produced a condition where a minority party was unrepresented in a whole section of the state and an undesirable sectionalism created in the legislature. Under the present system it has been found that a majority party, unless it numbers more than three-fourths of the total vote, is unable to elect all the members from the district, and any minority party which can muster more than one-fourth of the vote of the district can elect a representative. The majority party, estimating its strength in advance, will, if it cannot safely count upon more than three-fourths of the total vote, nominate but two candidates in the district and concentrate its vote upon these. The minority in such cases nominates but one and by concentrating its vote upon him secures his election. Under this system it appears that while representation is roughly proportional as between the two major parties, third parties have slight chance of securing representation.

Proportional
representation

The more elaborate system of proportional representation, which has for its object not only the representation of the minority party but of all the larger interest groups in the community, has not been

employed in this country as yet in the selection of state legislators. It has been used abroad in a number of European countries and in Australia. In America its use has so far been restricted to the selection of city councils. It is employed for that purpose in Ashtabula, Cleveland, and Cincinnati, Ohio; Boulder, Colorado, and in Winnipeg, Calgary and Edmonton, in Canada. The model constitution proposed by the National Municipal League proposes the use of proportional representation in the choice of the legislature. Proportional representation presupposes election districts large enough to insure the existence of several groups, each of which demands separate representation. The number of seats to be filled from the district will therefore be fairly large, so that the larger groups may secure the number of seats to which their numbers entitle them and so that the smaller groups may center their attention upon one candidate each in order that he may be elected. It is assumed that self-interest will prevent the scattering of votes by the smaller groups. Proportional representation has the advantage of giving representation to more than the members of the two major parties, and also gives an opportunity for representation upon the basis of race, religion, and social and economic factors, if the people wish to group themselves along these lines. This very possibility that the system may serve to accentuate this group difference has been one of the strongest arguments urged against the introduction of the system in the United States. So long as the two major parties continue to reflect, to a reasonable degree at least, the demands of the great majority of people, there is little likelihood that any system of proportional representation will be tried on a large scale in any of the states. If the process of industrialization proceeds for many more decades at the rate it has progressed in the past three, it may be that some system of cumulative voting or proportional representation will be introduced. A failure to mould the many races into one might also bring about the same result. The idea that this system of representation is an experiment is, however, quite unfounded, because many countries have tried it for many years with a considerable degree of apparent success.

In 1912, Minnesota sought to escape from the difficulties of unrepresented minorities by the introduction of nonpartisan nomination of candidates for the legislature. North Dakota adopted the same plan in 1923.

State constitutions place few restrictions upon the organization of the two houses of the legislature. Each house is made the judge

Organiza- tion	of the elections and qualifications of its own members. This means that in case any controversy arises concerning the validity of an election to a seat in either house, the house concerned may investigate the case and by majority vote decide between the rival claimants. Likewise if any question is raised involving the qualifications of persons elected to either house, that body may investigate and decide the question of the eligibility of the person. The lieutenant governor, in the states where that office exists, is designated as the presiding officer in the Senate, and the House of Representatives is authorized to select its own speaker. Other officers are chosen by the two houses respectively. Beyond these provisions each house is empowered to complete its own organization.
Speaker	The presiding officer in the House of Representatives is the speaker, who is nominally elected by the house, though in reality selected by the caucus of the majority party. He is chosen from among the most experienced members of the majority, since he must not only stand high in the councils of the party, but must be familiar with the intricacies of parliamentary procedure. This position is the post most eagerly sought after of any within the gift of the party,
Powers	save perhaps that of governor. The speaker's chief duties and powers are five in number: to appoint committees, to refer bills, to recognize members desiring to speak, to rule upon questions of parliamentary dispute, and to direct to a considerable degree the order of consideration of bills.
1. To appoint committees	He is accorded, in perhaps two-thirds of the states, the power, at least formally, of naming the members of the committees, although his choice may be to some degree dictated by the majority caucus and by various practical and extra-legal considerations. The speaker must be careful, in the first place, to distribute appointments with reference to sections of the state. It would be very poor strategy for the speaker to appoint all of the members of any committee from any one part of the state. The seniority rule also limits the speaker's power of appointment, for it is still adhered to in many legislatures; and committee chairmanships are normally awarded on that basis, in the absence of unusual circumstances. Then, in the third place, there are some committees to which only particularly fitted persons can be appointed. The committee on Judiciary would normally contain several members from the legal profession. So also, one would expect to find some farmers on a committee on Agriculture. These three factors, geographical consideration, the seniority rule, and the need of peculiar experience or fitness for membership

on the committee, tend to restrict the speaker's power of appointment somewhat; but even after these factors are allowed for, the speaker's power is very great. Through this means he is enabled to reward his friends and factional adherents by assigning them to committee chairmanships and to positions on committees of strategic importance. Thus, also, he may render his enemies impotent by assigning them to places on unimportant committees which seldom meet and seldom, if ever, have any bill of importance referred to them. By this power of appointment, coupled with his power to refer bills to particular committees, the speaker can to a large extent predetermine the fate of any bill. In cases where it is known in advance of the opening of a session that a certain important measure is to come before the legislature, the speaker has been known to select the membership of the committee to which the impending measure will be referred with especial reference to their views on this particular subject. Obviously such elaborate plans will be resorted to only in connection with an occasional and especially significant matter. This possibility, however, always makes the speaker a force to be reckoned with at this stage of procedure.

As has been suggested above, the speaker may use his discretion to a very wide extent as to the committee to which a bill shall be referred. The House has it within its power to order a bill sent to any particular committee, though this power is rarely made use of.

2. To
refer bills

The power to recognize or to refuse to recognize a member wishing to speak gives to the speaker a large degree of control over the course of debate. He may use this to give advantage to those of the same opinion as himself by according to them recognition, and may punish a refractory member by persistently refusing to recognize him and thereby deny him the privilege of speaking or of offering motions. In some states the practice prevails, as in Congress, of recognizing in debate only those who have previously secured the speaker's consent. This is not, however, widely practiced in state legislatures.

3. To
recognize
members

A fourth source of influence of the speaker is his authority to make rulings on motions and other points of parliamentary procedure. This gives him further opportunity to govern the course of debate and to make rulings which will redound to the advantage of his party or friends. The power serves a good purpose at times when a minority is attempting to block the action of the majority by resorting to dilatory tactics or by breaking a quorum. Appeal may

4. To
rule on
points of
order

be taken by the minority from a ruling of the speaker, but since he is the choice of the majority he can depend upon them to sustain his position.

5. To
control
the order
of bills

Finally, the speaker exercises an influence which often becomes a dominant one over the order in which bills come up for consideration. In some states where the organization of the legislature for carrying on business resembles that in the federal House, control over the actual order in which bills shall be taken up rests with the committee on rules. In those states the speaker is usually the moving spirit on the rules committee, and in matters of giving precedence to bills the committee is all-powerful. In some other states where legislative procedure is still in a somewhat rudimentary stage of development, bills are handed down for action by the speaker in the order which he sees fit to adopt. Under such an arrangement, though theoretically the House may call down any bill as it wishes, the majority will be slow as in all other instances to exert any compulsion over the speaker.

Lieutenant
governor

In the upper house, the lieutenant governor stands in a wholly different position from that of the speaker. Like the Vice-President in the United States Senate, he is not a member of the body over which he presides, and it may easily happen that he is not of the same political party as the majority of the body. Consequently he is not accorded a vote upon any question except in case of a tie, nor is he usually granted the privilege of naming the members of the committees. In some states he is accorded the right, at least when he is of the majority party, of appointing committees and of assuming something of a position of leadership. The Senate at the opening of its session elects from among its own number a president *pro tempore* whose duty it is to preside in the absence of the lieutenant governor or in case the latter becomes governor. In something more than a dozen states the office of lieutenant governor does not exist. In such states the Senate chooses its president who still retains all his rights of speaking and voting as a member of the body. Under such circumstances his position is not materially different from that of the speaker of the House of Representatives. Where there is no lieutenant governor, the president of the Senate usually succeeds to the office of governor in case of vacancy.

Presi-
dent *pro*
tempore

Besides the presiding officer there is in each house a large number of minor officers and employees. Chief among these are several clerks, including a journal clerk, a bill clerk and a reading clerk. There is in each house, ordinarily, a sergeant-at-arms, and a chief

doorkeeper who have the status of officers. Below these is a large number of assistant doorkeepers, clerks of committees, stenographers, pages and other miscellaneous employees. The clerks, sergeant-at-arms and chief doorkeeper are usually selected by the majority caucus. The minor employees are chosen nominally in a variety of ways, but these offices are in reality looked upon as spoils to be distributed at the will of members of the majority. The demands of members for a share in such spoils become so loud and insistent that in many states the number of doorkeepers, messengers, janitors, and what not, has become so great as to constitute a scandal. It is reported that in Illinois in the session of 1903, the legislature had 393 employees, of whom 92 were janitors. In Kansas, at a special session in 1908, after some agitation against the creation of such unnecessary positions, the lower house by an act of strenuous self-denial reduced the number employed by it to 71, dispensing, along with the rest, with the services of a "superintendent of ventilation" and a "superintendent of accoustics." The sums thus wasted, though not large in the aggregate, are sufficient to give a tone of insincerity to legislative protestations in favor of economy in other directions. In Wisconsin the legislative employees are under civil service regulation and for the whole legislature are kept within a hundred in number.

Minor
officers

Employees

As is true in Congress, the party caucus is a meeting of the members of one of the houses belonging to a political party. Some misunderstanding concerning the nature of the legislative caucus is occasionally encountered, arising from the use made of the term "caucus" in earlier American history. At that time the caucus was a secret meeting of a small group of self-appointed leaders held for the purpose of controlling the selection of party candidates. The legislative caucus is still a private meeting, but every member of the party is not only entitled to be present but is urged to do so. The caucus does not assume the prominent place in state legislatures that it does in Congress, due to the fact that in most states party organization in the legislature is not as fully developed and party lines not as closely drawn in voting as in the national body. New York is an example of a state in which party organization is highly developed in the legislature and party lines strictly drawn, and where, as a result, the caucus exercises a constant influence over members.

The
caucus

It is customary for the caucus of each party in each house, previous to the opening of a session, to meet to select the candidates whom

it will support for the various legislative offices. The speaker, president *pro tem.* of the Senate, floor leader, and sometimes other minor officers are thus selected by the majority caucus. It is the custom of the minority party to content itself with nominating a candidate for presiding officer only. The caucus usually delegates to the speaker or to a committee the distribution of the minor offices and posts within the gift of the house.

From time to time the caucus is called together when it appears to the leaders that party expediency demands a united party stand upon some bill. Seldom, however, is the party lash cracked about the heads of members, or party discipline inflicted upon recalcitrant members as is done in Congress.

Floor
leaders

In most legislatures the floor leaders of the two parties play a rather prominent part, in spite of the disregard of party lines on most bills. When administration bills, or those in which it is sought to redeem party pledges, or "caucus measures" are up, the leaders assume important rôles.

Steering
committee

Since it is understood that the minority cannot elect its candidate for the speakership, it is customary for the person who receives that complimentary vote to be made minority floor leader. Frequently, too, the defeated candidate for the speakership before the caucus of the majority is by common consent made their floor leader. Toward the close of the session, if not before, there is sometimes created a steering committee whose members are selected by the caucus or by the speaker. Its duties are much like those of the more formal "sifting" committee in Nebraska in selecting the bills which shall be given precedence, and further in seeing that these are pushed through to final passage.

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CHAPTER SEVEN

THE LEGISLATURE (Continued)

Legisla-
tive
power

THE general theory underlying our governmental system is that while the powers of the federal government are numerated, those possessed by the states are general in scope. This finds expression in the Tenth Amendment to the federal Constitution which says that all powers of government which have not been delegated to the federal government nor specifically denied to the states are retained by the states or the people. The statement that the states are bodies having general power means that the states may perform every act of government which has not been denied them expressly by constitutional injunction or impliedly by delegation to the federal government. It is true that under this broad authority the states perform a much greater range of functions than does the federal government.

Limita-
tions on
legisla-
tive
power

Within the range of state activity it will be found that the executive and judicial branches, like the whole federal government, are possessed of enumerated powers only. The effect of this is, therefore, that the great reservoir of governmental power not thus distributed is vested in the representatives of the people, the legislature. From the point of view of the legislature the powers which it may exercise are bounded in two directions: (a) on one hand by the definite assignment of specific powers and functions to other agencies of government, federal or state; and, (b) on the other hand by specific limitations placed in the constitutions of the state and of the United States. The specific limitations thus imposed may be distinguished with respect: (1) to organization; (2) to scope, and (3) to procedure.

The position assumed by the colonial assemblies determined the part which was to be assigned to the legislatures in the governments of the states. In all the provincial and proprietary colonies the governor was appointed by and represented the interests of an external authority and not those of the people. These external interests were viewed by the colonists as being opposed to their own, and the governors came to be thought of as the embodiment of all that was

obnoxious and oppressive in government. In all these same colonies, save Massachusetts, the council, although recruited from within the colony, stood in the minds of the people as being identified with those same outside interests. So it came about that the assemblies, although chosen by a highly restricted electorate, were looked upon as the champions of local rights and popular liberty, against executive oppression. They compared their assemblies engaged in these struggles, with the House of Commons in its contests to secure the rights of Englishmen in the old country in an earlier day. From this it was but a step to think of the assemblies as being vested with the same supreme authority with respect to their local affairs as was wielded by the Commons in England. When the troublous days of the Revolution came, it was these assemblies which led the struggle and assumed the position of temporary governments until state constitutions were adopted.

Early
confidence
in legis-
latures

Under these circumstances it was quite natural that the people should view with distrust every personification of executive authority, even though its power was derived from their own hands. It was natural, too, when the states became independent, that they should accept the theory that the whole of the sovereignty wrested from king and parliament should, unless otherwise specifically provided for, be vested in the legislature. It will be noticed also that when the time came to frame the first permanent constitutions of government for the states, it was the legislative assemblies which formulated and promulgated those documents. Although the work of several of these constitution-making bodies was informally submitted to the judgment of the electorate, only in the states of Massachusetts and New Hampshire did the idea at first prevail that ordinary legislatures were not the bodies to be entrusted with this constituent task.

The implicit confidence at first reposed in legislatures is witnessed by the fact that there are in the earlier constitutions practically no limitations on the scope of legislative activity, and comparatively few directions as to their organization and procedure. Moreover, the legislatures were, in a majority of the states, given authority to elect the governor and other general state officers, and in an even greater number of cases to elect the judges of the higher courts.

Emerging from the Revolutionary struggle enjoying the confidence of the people, the history of state legislatures has been a tale of steadily diminishing prestige and power. The narrow provincial spirit so frequently displayed by these bodies during the Revolution

Loss of
prestige,
due to:

which so frequently seriously hampered the prosecution of the war, seemed in some instances but to have endeared the legislatures to the people, since they reflected so perfectly sentiments which were widespread. It was not long, however, before the conviction began to assert itself that these bodies were using their broad powers unwisely, and that in some cases they were induced by corrupt influences to enact legislation which was not so much for the benefit of the public as the advantage of special interests.

The specific factors which contributed most potently to produce the increasing sentiment of distrust of legislatures may be grouped in two main categories: their questionable relations with private and special interests, and their mismanagement of the financial affairs of the states.

1. Rela-
tions with
special
interests

In the first place, it became apparent at an early date that legislatures would be confronted with a serious problem in meeting the pressure of economic groups desiring to secure special favors. Two facts determined the particular direction in which the pressure would be applied. First, it was then and for many years thereafter the practice to create corporations by special acts of legislation. Such acts became in each case the charter of the corporation, defining its powers and privileges. The number of corporations thus created was at first small and the aggregations of capital resulting relatively moderate in amount. The steady increase in the amount of capital seeking investment and the ever-broadening opportunities for the creation of new wealth by such investment, led to a constantly increasing number of new corporations, seeking broad powers and favorable privileges. Second, one of the greatest and most immediately available potential sources of wealth which offered itself for exploitation was the great area of undeveloped public land. The title to vast tracts was still vested in some of the states and the disposal of the lands rested ultimately in the hands of the legislatures. The conjunction of these economic forces proved to be a combination which some legislatures were unable to resist.

(a) Bank-
ing
interests

The revival of business activity after the adoption of the federal Constitution and the opening of the new country lying to the westward created a great demand for credit both in the older centers and in the new states. Legislation creating banks and extending banking privileges was freely dispensed to groups of irresponsible promoters whose subsequent operations were subject to no adequate supervision. Through the granting of such legislative favors the way was opened for corrupt relations between unscrupulous bankers and

legislators sometimes perhaps as unscrupulous, which in time came to the knowledge of the public. Everywhere the public was suffering in some measure from the operations of "wild cat" banks, the responsibility for which was brought ultimately to the door of the legislatures.

Even before the Revolution companies had been formed to speculate in or to develop western lands, and after the return of peace their number multiplied. The lands were in many cases disposed of in large tracts at nominal prices to speculators who believed that they saw possibilities of great wealth in the resale or development of their holdings. The activities of speculators in seeking favorable grants furnished irresistible opportunities and incentives for corrupt relations with venal legislators. In several states there came to light scandals similar in some respects to the great Yazoo land affair in Georgia which involved land speculators and legislators. A little later, and especially after the War of 1812, the demand for improved means of communication, particularly with the West, led to the incorporation of a host of turnpike, canal, and, later, railroad companies. Repeatedly it came to light that both corporate powers of a virtually monopolistic character and grants of land had been bestowed with prodigality, to the detriment of the public interest and the personal enrichment of individual members of state legislatures. It has been estimated that in the Middle West and South, not less than thirty-one million acres of land were donated before 1860 to aid various undertakings of public improvement. The revelations of intrigue and venality shook the confidence of the public in their legislative bodies, and furnished the incentive for placing limitations upon legislative power which were in some cases drastic.

(b) Land
interests

A second cause of the decline in legislative prestige was the unwise and often reckless management of the finances of the states. As long as the state's activities were confined to the ordinary police functions of government, their finances offered no serious problems. It was not long before there came insistent demands that the states lend assistance, not only with corporate privileges but with their money and their credit, to the great work of economic expansion which was in progress. Credit and means of transportation were the elements most urgently called for, and it was not long before the credit of the states was being freely used in banking and in ambitious projects of internal improvements. The fact that these projects were undertaken at the insistent demand of their constituents did not lessen the condemnation visited upon the legislature

2. Finan-
cial
operations

(a) Bank- when the enterprises failed. In addition to their liberality in grant-
ing operations ing banking privileges to private corporations, the several states
had, by 1837 when the great financial panic took place, incurred pecuniary obligations to the amount of more than \$50,000,000 for the purpose of engaging in banking themselves or of supporting by loan of their credit the operations of private banking corporations.

(b) Inter- Impelled by the importunities of the land speculators and settlers,
nal im- as well as by the rivalries engendered by state pride, the states
provements quite generally embarked upon undertakings for internal improve-
ment. The building of the Cumberland road, begun in 1811 and

Roads finally completed to Vandalia, Illinois, in 1852, offered the first great stimulus to road building. Both federal and state governments undertook these projects, but the veto of the Maysville road bill by Jackson in 1830 resulted in the turning over of road-building activities to the states and to localities. State road-building projects were undertaken in many places, especially as feeders to waterways, natural or artificial; and several millions of dollars were spent before the panic of 1837 in these undertakings.

Canals In 1817, the State of New York began the construction of the Erie canal which was completed in 1825. The success of this public work, both in building up the country through which it passed and in its contribution to the development of the West, gave an impulse to canal building in all parts of the country. Rivalry for commercial supremacy between New York and Philadelphia led the State of Pennsylvania to undertake an elaborate system of canals and railroads to connect Philadelphia with Pittsburgh and with the anthracite fields of northern Pennsylvania. The excessive cost of the system due to the natural physical obstacles to be overcome made it financially unprofitable, and after a burden of \$16,000,000 had been imposed upon the state, the system was turned over to a private company. Maryland contributed \$7,000,000 to another unsuccessful enterprise, the Chesapeake and Ohio canal. Ohio, Indiana, Illinois and Michigan embarked in extensive projects of canal building which contributed little to the wealth of the states but left a serious burden upon the taxpayers. Canal mileage in the country, which in 1830 had reached 1200 miles, increased to 3700 miles by 1850. Most of this mileage had been constructed as state undertakings or with state aid. Debts to the extent of not less than \$60,000,000 were incurred by the states for canal building before 1837.

Railroads While the era of canal building was still at its height, railroad projects became active rivals of the canals in their bids for financial

support. As has been said, the Pennsylvania system was a combination of canal and railroad. Pennsylvania, Michigan, South Carolina and Georgia undertook as state enterprises the first railroad development within their boundaries. Several states, including Massachusetts, Maryland and Illinois, loaned money or took stock to aid railroad construction, while others loaned their credit for the same purpose. Indiana allowed railroads to issue paper money to meet the cost of construction, and Ohio offered to loan its credit to the extent of one-third of the amount of stock of any railroad built in the state. It has been computed that in addition to other forms of financial encouragement given to internal improvements, bonds were issued or authorized by states in aid of banks, roads, canals, railroads and other miscellaneous undertakings of similar character to the extent of at least \$170,000,000 before the close of 1837. All but seven of the states incurred debts of this character. When the panic of 1837 came, some were unable to meet their interest payments; and not less than six states repudiated at least a part of their debts incurred as a result of their adventures in the fields of banking and internal improvements.

It has already been stated in discussing the general nature of state legislative power that limitations upon that power may result either from the assignment of particular functions to other organs of government, or from specific limitations placed upon them.

The loss of prestige of legislatures which results from their failure to measure up to the standards of wisdom and disinterestedness set for them by the public, began by the middle of the nineteenth century to show itself in the form of steps taken to circumscribe their powers in both the above mentioned directions. There was, in the first place, a well-masked tendency to strengthen the powers and expand the functions of other branches of the government at the expense of the legislature. In the second place, there was an equally marked tendency to restrict their freedom of action with respect to their organization and procedure; and in the third place, to limit the scope of their activities.

Turning first to consider the diminutions which have come to legislative power through the strengthening of other branches of government, it will be found that this has come about with respect to each of the other branches: executive, judicial, and electoral.

A marked feature of the development which state government has undergone is the increasing range of the functions and the powers vested in the executive branch. The effect of much of the expansion

Resulting
limita-
tions on
legislative
power

1. By
strengthen-
ing
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organs

(a) Ex-
ecutive
power

in this direction, especially as it involves the governor, has had the effect of limiting the range of activity of the legislature. This tendency of the executive power to encroach on what was once the undisputed sphere of the legislature, shows itself both among the legal and the extra-legal functions of the chief executive.

Veto

In but two states did the original constitution provide for the executive veto of legislative acts. In Massachusetts this power was bestowed upon the governor alone; whereas, in New York, it was conferred upon a council of revision consisting of the governor, the chancellor and the judges of the supreme court. Within two decades, however, four more states gave the veto power to the governor. This change was due probably both to the example furnished by the federal Constitution and to the more general acceptance of the doctrine of checks and balances, especially with a view to limiting the freedom of legislative action. As the nineteenth century progressed, the idea of the executive veto was generally accepted in the old as well as in the new states, until at the present time the legislature of North Carolina alone is free from this limitation.

Special
sessions

From the beginning the governor called the legislature in special session. When at a later date constitution-makers began to set limits to the duration of legislative sessions, it was found desirable to give consideration likewise to specially called sessions. It was perceived that the attempt to limit regular sessions might be circumvented by the device of special sessions. To preserve the possibility of such sessions in time of real need and at the same time to hold them within limits, a stipulation was frequently made that at a special session there could be considered only those matters which were specified in the governor's call or which were presented to it subsequently in an executive message.

Executive
budget

The introduction of the budget system and more especially the development of the executive budget has, within the last decade, resulted in some diminution of legislative control over finance. In a few states, among which Maryland was the pioneer, it is provided in the constitution that while the legislature may reduce any item in the general appropriation bill submitted by the governor, it may increase none. It is true that after this general appropriation bill has been passed, the legislature may make additional appropriations, but only on condition that revenues to meet the expenditure are provided for at the same time.

The increase in the power of the governor to make appointments

has to a considerable degree come as a result of the transfer of that power from the legislature. Appointment

Besides these formal and legal innovations which have had the effect of limitations upon the freedom of action of the legislature in these various directions, there has also come about at the same time a certain amount of informal or extra-legal limitation. As will be indicated at greater length in a subsequent chapter, there has been perceptible in recent times a strong development of the influence of the governor as a legislative leader. There has appeared a popular disposition to rely on him to outline a program of legislation, and by the exercise of a variety of devices of political leadership, to secure the enactment of that program into statute. In so far as developments have gone in this direction, they have done much to depose the legislature from its original position of leadership in policy-forming and to reduce it to a factor of secondary importance. Extra-legal developments

The development of a more complete judicial organization and a clearer demarcation of the judicial from the legislative function took from the legislature a range of activity which, though judicial rather than legislative, had from time immemorial been exercised by legislative bodies. It must be said, however, that this change was brought about quite as much because of a clearer perception of the essential difference between legislative and judicial functions, as because of any criticism of any specific acts of the legislature in this field. In England, the House of Lords exercised the function of a court of last resort, and a variety of acts of a judicial character were accomplished by means of an act of Parliament; and the colonial legislatures, as a matter of course, conceived themselves as vested with similar powers and exercised judicial power in a wide range of cases. In a number of the colonies, too, the governor and council constituted the supreme court to which appeals lay from the regular courts of law. It was not surprising, then, that even after the ostensible separation of the judicial from the legislative function, by the creation of separate supreme courts in the states, the legislatures should continue to perform judicial functions. Legislative acts setting aside verdicts, granting new trials, granting divorces and rendering decisions of a distinctly judicial character, were not uncommon in some of the states. Although the authority of legislatures to perform such functions was questioned in some quarters from an early day, it was not until after the middle of the (b) Judicial power

nineteenth century that the last state legislature ceased to exercise judicial authority in cases at private law.

A more far-reaching restraint upon legislative omnipotence, due to the expansion of the range of judicial activity, came about through the development of the doctrine of judicial review. By judicial review of legislative action is meant the function of the court in determining whether a certain act, though clearly legislative in character, happens to fall within the limits of the authority of the law-making body as circumscribed in the constitution.

Judicial
review of
legislation

One of the most highly prized possessions of the English race is the body of civil liberties won through centuries of struggle, popularly known as the "rights of Englishmen." These rights constituted a bulwark of defense against the acts of the king and of his ministers. Ever since the independence of the judiciary had become an established fact in England, it had been the privilege of the humblest citizen, whenever he felt that his constitutional rights as an Englishman had been violated, to appeal to the courts and secure redress. These liberties had been won under the leadership of the House of Commons, and the idea had never been entertained that such guaranties were to be thought of as being directed against acts of Parliament. So it became a well-established principle that whatever Parliament enacts is constitutional, and that the courts have no power to question the validity of an act of that politically omnipotent body. The remedy against an unjust act of Parliament is not judicial but political, and redress must be sought not through the courts but from the Parliament itself or at the ballot box. It seems to have been taken for granted at the outset that the state legislatures succeeded to the same high privilege.

It was admitted on all hands that the colonists, in emigrating to America, brought with them the "rights of Englishmen," to be enjoyed as completely as in the home land. On this side of the ocean these liberties came to be embodied in formal bills of rights and finally incorporated in state constitutions.

It was not long before it was perceived that if the acts of legislatures could not be questioned in the courts, then guaranties of liberty appearing in the constitutions were of no avail against the legislature. On the other hand it followed that if the liberties thus guaranteed in bills of rights were to be enforced by the courts against infringement by the law-makers, then the supremacy of the legislature was at an end. When a case, arising under a statute which was in conflict with some provision of the constitution, came before

the court, that body found itself confronted by two conflicting principles, one laid down in the statute and the other in the constitution. In such a situation the courts found themselves obliged, since, except for the supremacy of the federal Constitution and laws, the constitution is the supreme law of the state, to adhere to and apply the principle laid down in that document and to refuse to enforce the inconsistent terms of the statute. It is this refusal to enforce a statute because of its inconsistency with the constitution that is spoken of as declaring a statute unconstitutional.

Gradually this doctrine of judicial review came to be generally accepted and, as early as 1798, was clearly stated by a justice of the Supreme Court of the United States.

The advocates of legislative supremacy were not disposed to yield without a struggle. In Rhode Island the highest court was elected annually and could be removed by the legislature. When that court declined to enforce a statute compelling citizens to accept a depreciated paper currency at par, steps were undertaken by the legislature to remove the judges. This effort failed, however, but the next year all these recalcitrant judges failed of reelection by the legislature. In North Carolina, in 1794, the supreme court said of the provisions of the bill of rights that they were "declarations the people thought proper to make of their rights, not against a power they supposed their own representatives might usurp, but against oppression and usurpation in general."¹ They said that a certain section "could not be intended as a restraint upon the legislature." Rather it was declared that such guaranties were intended to assert the rights of the people "against the power of the British king and Parliament and all other foreign powers who might claim a right of interfering with the affairs of this government."

As late as 1817, in New Hampshire, the courts, in commenting upon a section of the bill of rights which declared that no citizen should be "deprived of his life, liberty, or estate but by the judgment of his peers, or by the law of the land," said: "We think that the 15th article in our bill of rights was not intended to abridge the power of the legislature, but to assert the right of every citizen to be secure from all arrests not warranted by law."²

Finally, the legislature's position in the state has been weakened by the increased direct participation of the voters in the processes of government. The election of the governor, which was at first

(c) Elec-
toral
power

¹ *State v. ———*, 1 Hay. (N. Car.) 29, (1794).

² *Mayo v. Wilson*, 1 N. H. 58, (1817).

Election
of
officers

vested in the legislature in more than half of the states, began as early as 1790 to pass to the people; and by the middle of the nineteenth century legislative election of the governor was a thing of the past. This change was due, however, to the rising tide of democratic sentiment rather than to legislative incapacity. The election of lesser executive officers remained longer with the legislature, but ultimately was transferred to the voters or to the governor. Instances of the selection of such officers by the legislature survive at the present time in but few states, notably in some of the older ones, including Rhode Island, New Jersey and Virginia. During the earlier half of the nineteenth century, the same enthusiasm for popular election which had affected the selection of executive officers spread to the choice of judges. Election of judges by the legislature, once common, lingers now only in the states of Vermont, Rhode Island, Virginia and South Carolina.

Initiative
and
referen-
dum

The introduction of the initiative and referendum when applied to state statutes constitutes another manifestation of the popular distrust of legislatures. It is an attempt to give to the voters themselves a greater share in the process of legislation, and thereby place a potential limitation upon the actions of their representatives. It has already been pointed out that the use of the referendum as applied to constitutional amendments began as early as the Revolutionary period, and that the principle of the initiative, for the same purpose, has been used since 1902. The use of these devices, with respect to statutes, is but an extension of the application of the same principle to a new purpose.

Though these devices are ordinarily used together when applied to statutory measures, this is by no means necessary. Each may be employed independently of the other. The right of citizens to petition for specific legislation has been recognized throughout our history, and it has always been easy in this country to secure the introduction of any bill into the legislature. Neither of these privileges, embodying to some degree the idea contained in the initiative, has proved a powerful engine of the popular will unless accompanied by the compulsory referendum. The initiative is not, as a matter of fact, employed except in connection with the referendum. Its purpose is to force consideration of a measure which the legislature has neglected or refused to act favorably upon. The referendum may be, and is, used apart from the initiative, though they are generally found together.

The use of the referendum may be either optional or manda-

tory. It is said to be optional when it may be invoked by the legislature or not as that body may desire. It is said to be mandatory when it may be called into use without action by the legislature or even against the wishes of that body.

The optional referendum was in use for two distinct purposes during the nineteenth century. In the first place, it was the custom in some states occasionally to refer a proposed statute to the voters at the polls in order to obtain an expression of popular opinion before legislative action was taken. This was generally done by the legislature only at infrequent intervals, and without any express sanction by constitution or statute. In Illinois, in 1901, it was provided, under what has been known as the Public Policy Law, that, upon petition of a designated number of citizens, any question of public policy might be placed upon the ballot for the purpose of securing an expression of opinion advisory to the legislature.

A second use of the optional referendum is illustrated by the local option laws of the period before the adoption of the Eighteenth Amendment. Under such laws, an act which had been passed by the legislature might or might not be made to apply in any locality upon the vote of the electors in that locality. The newer forms of city government—the commission and manager types—are in many states made the subject of optional referendum. The optional form of the referendum in its various uses is not usually thought of when the referendum on statutes is under discussion.

The mandatory referendum may be employed either in a positive or in a negative way. When employed in a positive way, its purpose is to secure the adoption by popular vote of a measure of legislation which has been proposed by initiative petition. The measure thus popularly initiated may or may not have been submitted to the legislature and rejected by it before the referendum is resorted to. The effect of a favorable vote by the people is the same as the passage of the measure by the legislature, except that a bill adopted by the initiative and referendum is not subject to executive veto. When used in a negative way, it is applied to measures which have been enacted by the legislature, and it has for its purpose the reversal of the action of that body. This use is sometimes spoken of as the electoral veto. It differs from the executive veto in that it cannot be set aside by the legislature.

The combination of the initiative and the compulsory referendum, as they were first applied to statutes by South Dakota in 1898, was adopted with increasing frequency until the year 1912. Interest in

Referendum:
optional
or
mandatory
1. Op-
tional

2. Mandat-
ory

these institutions seems to have grown coincidently with the rise of the progressive movement and to have found its most widespread adoption at the climax of that movement. Since that date, only four states have adopted it, and in but three of these has it actually become effective. At the present time both the initiative and the referendum are established in twenty states. In two additional states the referendum has been adopted in its negative form only.

The initia-
tive
procedure

The process of the initiative and referendum is everywhere essentially the same, and varies only in detail from that made use of in the case of constitutional amendments. The project of legislation is drafted in the form of a bill, and a petition with a copy of the bill attached is circulated for the purpose of securing signatures. The securing of signatures is, in most instances, done by workers paid for the work on the basis of the number of names secured. This custom has led to charges of fraudulent signatures, and in some cases such charges have been proved. To obviate this possibility the payment of a compensation has been forbidden in South Dakota; and to secure the same end, the petitions are, in the state of Washington, not circulated, but placed in certain public offices where the voters must go to affix their signatures. At the time of signature, precautions are taken that all signers shall be legal voters. These precautions against fraudulent voting seriously handicap the proponents of a measure, since the circulation of the petition is too wearisome a task to be imposed on voluntary workers, and since it is difficult to induce the voters to go to the registration offices to affix their signatures.

- The number of signatures necessary to an initiative petition varies in the different states from five per cent to ten per cent of the qualified voters. In Maine and Maryland, instead of a certain percentage, a definite number of voters is required. To prevent further the abuse of the privilege of the initiative, the stipulation is placed in certain constitutions that the process shall not be used to propose appropriations, special legislation, or the recall of judges. In some states, when an initiated measure has been defeated upon referendum, it cannot be made the subject of petition again within three years or, in some cases, except upon petition of twenty-five per cent of the voters. To prevent burdening the ballot with proposals of merely local interest, a distribution geographically of the signers is required in some places. In Montana it is required that two-fifths of the counties be represented, and in Massachusetts the

requirement is that not more than one-fourth of the signers shall be from any one county.

Upon the completion of the signing of the petition it is filed with some state officer, usually the secretary of state, who satisfies himself as to the sufficient number and the genuineness of the signatures. With the verification of the petition, the process of the initiative is completed.

The initiative may be either direct or indirect. In the case of the direct initiative, the proposal, after it has been initiated, goes directly to a popular referendum, ignoring the legislature. In the case of the indirect initiative, the petition is addressed to the legislature and the further progress of the measure depends upon the action of that body. The states having the initiative are about equally divided between the direct and the indirect forms.

The initiative:
direct or
indirect

If the legislature acts favorably, no further action is necessary; but if it fails to pass the proposed bill within a fixed time, it is then referred to the people. In Ohio only three per cent of the voters is necessary to the proposal of an act; but after the legislature has failed to pass the bill, another three per cent is necessary to send the message to a referendum. In some instances the legislature must accept the bill without change, while in others it may amend the bill or offer a substitute to the voters. The purpose of permitting the legislature to amend the bill is to secure a more careful consideration of the subject with respect to both form and substance. In Ohio it is the duty of the Legislative Reference Department, upon request, to certify the correctness of the form of the bill; and in Washington it must be submitted to the attorney-general for the same purpose as well as to secure an opinion upon its constitutionality. Where the indirect referendum is thus employed, emphasis is placed upon the fact that the legislature is the normal agency of law-making; and the purpose is to secure action on the subject in some form, rather than the passage of the bill in the particular form offered.

The positive use of the referendum is a supplementary process to the initiative. When the initiative petition has been filed and verified, in the case of the direct initiative, or after the legislature has failed within the allotted time to pass the proposed bill under the indirect method, it becomes the duty of the secretary of state to place the question of adoption or rejection upon the ballot at the next regular election, or under certain conditions at a special election called for the purpose. Under the older referendum pro-

Referen-
dum:
positive
use

visions, the effect of the filing of a petition was to suspend the act. It was found, however, that minorities who had no hope of securing a rejection of the act in question were using the petition merely to stave off the taking effect of it. To circumvent such proceedings, there has been a recent tendency not to suspend contested acts awaiting the outcome of the action.

Referen-
dum:
negative
use

In its negative use, the referendum is employed to bring to the test of a popular vote a measure which has passed the legislature. In order that an opportunity to protest may be afforded, it is stipulated that no act of the legislature, other than those of an emergency character, shall take effect within a fixed number of days, usually ninety, after its enactment. If, within that period, a petition signed by the requisite number of voters is filed with the secretary of state, the act in question is suspended until it can be submitted to a referendum.

The number of signatures varies, as in the case of the initiative, from five to ten per cent of the voters, though a definite number rather than a percentage is required in a few states. The signatures on the petition having been verified, the question is placed on the ballot and submitted to the voters.

It is obvious that the value of the referendum depends upon the interest and information displayed by the voters at the polls. Much depends upon the steps taken to bring the subjects to the attention of the voters. Most states, for this purpose, make provision for the publication of referred measures, and at least ten states provide for "publicity pamphlets." These pamphlets, prepared by state authority and sent to every voter in the state, contain the text of the bill and brief arguments submitted by its proponents and its opponents.

Emer-
gency
measures

A difficulty presents itself in the fact that there are occasionally bills upon which there is need of immediate action, and that to suspend the taking effect of such acts would work a hardship or even be prejudicial to the public welfare. An example of such a measure would be an act to authorize the taking of immediate steps to meet an epidemic of disease and to appropriate money for that purpose. To provide for such acts, it has been customary to stipulate in the constitutional sections establishing the referendum, that this privilege shall not apply to emergency measures, *i.e.*, laws that "may be necessary for the immediate preservation of the public peace, health, or safety." Since the decision of the question as to the existence of an "emergency" is in some constitutions left to the

judgment of the legislature, the way is thus left open for that body to defeat the spirit of the provision by declaring emergencies at will. In some constitutions it has been stipulated that bills upon certain topics shall not be declared emergency measures. Several states have included in the category of emergency subjects, and hence not subject to referendum, appropriations for current expenses of government and for the support of public institutions and public schools. Massachusetts enumerates a considerable list of matters which cannot be made the subjects of referendum, and the declaration of an emergency on any bill there requires a two-thirds vote of the body. The governor in that state may declare a protested act to be an emergency measure. On the other hand there has been a tendency to favor the use of the referendum upon certain subjects of importance. Among the subjects sometimes so enumerated are the granting of franchises or privileges for longer than a single year, acts for the purchase or sale of real estate by the state, acts infringing upon the right of municipal home rule, and those for the abolition or creation of public offices.

In view of the vigor with which the advocates of these devices for direct action have urged their adoption, and the beneficial effects prophesied from their use, and in view, on the other hand, of the dire results foretold by their opponents, it is of interest to observe the extent of their use and the kinds of subjects upon which they have been invoked. A tabulation, prepared in 1919 and covering the years since 1900, shows that as a larger number of states came to adopt the devices, the number of acts submitted to the people increased down to the year 1914, and that since that time there has been a falling off in the number. The whole number of statutes submitted to the voters during the period 1900-1919 was 288, and from 1919 to 1925 the number was 79. Of this number, 160, or 55 per cent, were proposed by initiative petition. Of the remainder, 34 were referred by the legislature itself and 94 were acts passed by the legislature and referred to the voters by petition. Of the 288 submitted to referendum, 120, or 41 per cent, were approved at the polls.³

Initiative
and
referen-
dum:
extent of
use

To gain a proper conception of the task thus imposed upon the voters, it should be borne in mind that during the same period in the same states 429 constitutional amendments were submitted to be voted on. As to the number of proposals submitted by a single

³ *Illinois, Constitutional Convention Bulletin, No. 2, p. 101 et seq.*; Holcombe. *State Government in the United States*, p. 480.

state, Oregon with 90 exceeds all the rest. The largest number of legislative measures submitted at a single election was 23 in Oregon in 1914, although counting both constitutional amendments and statutes submitted at one time, California exceeded this with 47 in the same year. The matters which seemed to have been most often made the subject of referendum are those relating to the structure of government state and local, primaries and elections, finance and taxation, and the control of corporations, particularly those operating or controlling public utilities.

As in the case of every political device which has been offered in the name of reform, the proponents of the initiative and referendum have made extravagant claims of benefits to be derived from its adoption, and the opponents have been equally sweeping in their condemnations of it. In this, again, as in the case of other reforms, the facts have justified the prophecies of neither side. The main arguments, as they have been presented by the contending groups, upon the merits of the initiative and referendum, may be thus briefly stated.

Arguments
for the
initiative
and
referen-
dum

A first argument in favor is that they serve as a check upon the legislature when it fails to realize its obligations to the public welfare and yields to pernicious and corrupt influences. This may make itself felt, as has been shown, either to defeat undesirable acts or to overcome the unwillingness of the legislature to heed the popular demands for specific legislation. To substantiate this argument those favoring the initiative and referendum point to various instances of rejection at the polls of acts inimical to the public which have been passed at the behest of sinister influences. Further, they call attention to the number of acts of a progressive and constructive character which have been placed on the statute books by the process of direct legislation when demands for similar acts have been ignored by the legislature. In this connection, too, must not be disregarded the deterrent and the stimulating effects which the pressure of these institutions may have upon the members of the legislature.

In the second place, it is said that they are democratic and have an educative influence upon the citizens. Since they substitute direct for representative government, that they are democratic cannot be questioned. That they have an educative tendency is also apparent; but their true value as an influence in that direction can be estimated only when bearing in mind the cost in unwise legislation at which the education is acquired.

In the third place, it is urged that these devices stimulate interest in government because the citizen is made to feel that he is actually taking part in the governmental process, and can make his opinions felt. The force of this argument will depend much upon the extent to which the opportunity to vote on these questions actually inspires an interest as a matter of fact, rather than upon generalizations as to what their effect ought to be. It has been found, as a result of certain studies, that the extent to which voters participate in a referendum ranges roughly from forty-five to eighty per cent of the vote cast at the particular election, the average being about seventy per cent. When this proportion is compared with that of the total vote which expresses itself upon a referendum of constitutional amendments in states which do not employ the statutory referendum, one must conclude that the effect of the use of this institution is actually to stimulate popular interest.

Those who do not favor the use of the initiative and referendum, as applied to ordinary statutes, present several reasons which to them are conclusive. First, they maintain that they place an additional responsibility on the already overburdened voter and that he is usually either unwilling or unable to pass an intelligent judgment upon many of the questions presented to him. The average voter, it is believed, may be relied upon to give a sound opinion on general questions involving the broader and more fundamental ethical or economic principles; but it is contended that, upon the detailed and technical problems often involved in the legislative act, he is quite incompetent to judge wisely or intelligently. An act, for example, which inaugurates a graduated maximum scale of rates for railroad freight in less than carload lots is scarcely one on which the voters at large are in a position to express an intelligent opinion. That the publicity pamphlets have had much effect in educating the voter, or that they have been generally read, is seriously questioned by some investigators of the subject. To the retort that the average legislator finds himself in a hardly more favorable state of knowledge on the same kind of measure, when called upon to vote, the rejoinder is made that he is at least in a more advantageous situation and under a stronger urge to secure intelligent information than is the voter.

Arguments
against
the
initiative
and
referen-
dum

Second, it is said that the initiative and referendum furnish merely an opportunity for a "yes or no" vote. It is pointed out that acts of the legislature involving important personal and property rights are, in their final form, the result of many compromises and adjust-

ments between the interests affected, and that these are secured by the attrition of mind upon mind in conference and debate. For such compromises and adjustments, and the weaving of new enactments into the warp and woof of existing law, there is no place under the initiative and referendum. The reply offered by the friends of direct legislation is that too often in legislative halls such attrition is productive of heat rather than light.

Third, it is urged that the initiative and referendum weakens the sense of responsibility of the legislature for its task. It is frequently evident that legislative bodies have been inclined to yield lightly to demands for legislation of doubtful constitutionality, relying on the courts to correct their errors. It is believed by many that the sense of responsibility of the legislator will be further weakened by the argument that if the public desire legislation on a subject, let them initiate it; or, if they do not approve of the solution offered by the legislature, they have a remedy in the referendum.

In the fourth place, it is said that the initiative and referendum make it easier for fanatical minorities to foist "half-baked" and unsound policies upon the state. To this objection the answer offered is the considerable proportion of such proposals rejected by the referendum, as well as the record of constructive measures which have been thus enacted.

Con-
clusions

The conclusion with regard to the use of these institutions would seem to be that they do possess a real value as a measure both of securing occasional enactment of desired legislation as well as of defeating acts against which there is popular dissatisfaction. But the fact that they offer no opportunity for discussion and compromise, and that they place upon the voters a burden of decision which they are frequently neither prepared nor willing to assume, must seriously impair their value as organs of law-making. It will be found, however, that their ardent advocates have not really intended that these devices should become in any sense a substitute for the regular process of legislation, but that they shall stand as popular safeguards to be employed in emergency only. The greatest practical benefit seems likely to be derived from their deterrent or their stimulating effect upon the legislature itself.

[Limita-
tions on
legisla-
tive
power]

A second means by which the freedom of action of legislatures has been curtailed is found in the restrictions placed in constitutions with respect to the organization and procedure of those bodies. It has already been seen that prescriptions with regard to number of members, rate of remuneration, and length of session appear in

many constitutions. Likewise, stipulations as to the introduction of money bills, subjects to be included in a single bill, the title of bills, steps in procedure, form of the vote and the majority necessary to pass measures, are frequently laid down. All constitute real limitations upon legislative power, many of which were in our first constitutions thought unnecessary. The latter of these limitations which grow out of stipulations with respect to procedure will be discussed in a subsequent portion of this chapter.

A third class of limitations to be considered are directed especially toward the scope of legislative activity in fields which are distinctly legislative in character. They take the form either of positive directions or of prohibitions. The limitations of this kind, though varying widely in detail, fall easily into a few well-defined groups and have to do for the most part with the subjects of finance and special legislation.

Limitations with respect to matters of finance may first be considered. The unfortunate experiences of the states arising from the financial experiments of the first half of the nineteenth century, led to the placing of some rather strict limitations upon legislative discretion in matters of taxation, appropriation, and the creation of indebtedness. With respect to taxes, the most widespread mandate is that they shall be uniform and equal upon all property; and to this end legislatures are charged especially to provide for the just valuation of all property, real and personal. This is occasionally supplemented by specific instructions as to the valuation of mines, live stock, land and improvements, as well as corporate property of all kinds. Many of the tax provisions more recently introduced, such as those permitting the classification of property for purposes of taxation, and the introduction of the income tax, have the effect of modifying the earlier sweeping attempts to secure equality in taxation. Sometimes a mere gesture is made by directing that taxes laid shall be sufficient for "the economical administration of the government" or "to defray the necessary expenses of the state government." Likewise, it is sometimes prescribed that the rate of taxation, either for all taxes or for special forms of taxation, shall not exceed a fixed rate; that persons, corporations, and localities shall not be exempted from taxation, or that only specified exemptions shall be made.

With respect to appropriations, it is quite generally stipulated that they may be made only by bill, and not by resolution or otherwise; and that they shall be only for public purposes. In a num-

2. By regulating organization and procedure

3. By limiting the scope of action

(a) With respect to finance

Taxation

Appropriations

ber of instances, power to make appropriation is limited to the amount of estimated revenues, except in cases of dire emergency such as invasion or insurrection. Specific objects for which appropriation cannot be made are sometimes specified, including the support of sectarian schools or of private or corporate enterprises, or grants to local areas of government. It is frequently required that the general appropriation bill shall provide only for ordinary expenses of government and that salary bills shall not contain other matters. In a few instances it is even decreed that the legislature may decrease, but may not increase, items in the general appropriation bill. In bills other than this, appropriations must be for specific purposes; and the specific sums in each case shall be mentioned.

Debts

In most states there are found very definite limitations upon the power of the legislature to incur debt, either by borrowing or by the loan of the credit of the state to support debts incurred by persons, corporations, or localities. In some instances there is an absolute prohibition upon the creating of a debt save for specific purposes mentioned. The purposes most commonly thus specified are to repel invasion, suppress insurrection, and to pay the interest on or to refund existing debt. Sometimes debt for other unspecified purposes is permitted, but to a very limited amount. The maximum of indebtedness which the legislature is thus permitted to incur may be expressed either as a fixed amount, ranging from fifty thousand dollars in some of the older states, to as much as two millions in the far west, or it may be determined as a certain per cent of the total valuation of the state. In perhaps a third of the states, these limits may be exceeded with the consent of the voters obtained through a referendum. Still other limitations upon the debt-incurring power are requirements that the act of authorization shall specify distinctly the object of the debt, and shall be passed with certain unusual formalities or by an unusual majority. To prevent the accumulation of arrearages of interest and delay in the payment of the principal, the duty of making specific provisions for meeting both are imposed on the legislatures. Not only is the power to create and to perpetuate debts by direct means thus closely restrained, but the power to create them indirectly is still more strictly limited. The disastrous consequences of the liberal and even reckless policy pursued in aid of internal improvements led the people to specify in no uncertain terms that the credit of the state shall not be given or loaned to any political subdivision or to any private individual or corporation. Neither can any local or private debt be

assumed or paid by act of the legislature. The budget system, when incorporated in state constitutions, has for its purpose the limitation of the power of the legislature to continue the haphazard methods which they had hitherto pursued in making appropriations and levying taxes.

The other principal field in which the scope of legislative action has been curtailed is that of special legislation. With respect to the breadth of their application, statutes may be classified as general and special. General legislation is that which applies to all places and to all persons within the state, or to all places or persons within the same class. If applicable to a class only, the basis of classification must be appropriate to the purpose of the act. Thus a statute requiring that all persons practicing medicine must secure a license certifying medical proficiency is a general law, although it applies only to a single class of persons, because the classification is pertinent to the requirement imposed, *viz.*, a knowledge of medicine.

(b) With
respect to
special
legislation

Special legislation is that which applies to less than all the state, or to an individual, or some number of individuals less than a class. An act conferring the right on a certain county to levy a special tax to build a court house would be an example of special legislation. Likewise acts bestowing a pension upon an individual, granting a divorce, or exempting a corporation from taxation, are acts of special legislation. Sometimes a distinction is made between special legislation which is local, *i.e.*, relating to a particular subdivision of the state, and private, *i.e.*, relating to some person, group, or private corporation, but this is not a material one.

The practice of creating corporations by the grant of a special charter to each, instead of allowing them to incorporate under a general law applicable to all alike as is now the prevailing method in most states, has already been referred to. This was the procedure formerly followed, in the creation of private corporations and in the incorporation of towns and cities. As has been suggested, corporations were at first few in number, and they presented no serious problem in legislation.

It is a well-known principle of the law of corporations that the powers conferred upon corporations, both private and municipal, shall be strictly enumerated in the charter. Another principle is that the powers thus conferred shall be strictly construed. This means that unless a given power is clearly granted by law, the assumption is that the intention was not to give it. Therefore, it followed that when corporations found new powers desirable, they

were obliged to go back to the legislature for amendments to the original act of incorporation.

Under such circumstances, as business expanded and towns and cities became more numerous, the demands, not only for new charters, but for amendments to charters already granted, were multiplied; and this sort of legislation came to consume more and more time of the legislature. Thus matters affecting the welfare of the whole state were subordinated to the claims of private and local interests. The securing of charters conferring special privileges and powers not granted to all, gave usually to the recipients such personal advantages that representatives of special interests besieged the legislative halls in droves in quest of special acts. Not only was the time of the legislature consumed, but the power resting in the legislature thus to confer pecuniary advantages, opened the way to endless trading and logrolling, and to not a little corruption. The banking and land scandals, already alluded to, were the outgrowth of special legislation. Obscure phrases innocent in appearance often conveyed grants of great financial value to a recipient who would generously share his advantage with those who had been responsible for placing it in his hands.

The volume of special legislation swelled as the years advanced. In 1850, the year before special legislation was restricted in Ohio, the legislature of that state passed 545 special acts. The Illinois constitution of 1848 forbade special legislation upon certain subjects; but, notwithstanding this, the legislature of that state, in 1869, the year before such legislation was finally prohibited, passed special acts covering 3435 printed pages, as compared with 442 pages devoted to public acts. In North Carolina, in a single year, 2277 pages of special legislation were produced, as compared with 457 pages of a general nature. In 1917, Tennessee produced 2582 pages of special, as against 598 of general, acts.

The possibilities for evil lurking in the practice of special legislation were perceived very early. In 1798, Georgia, in revising its constitution, decreed that the legislature should no longer have power to change names, legitimize persons, make or change precincts, or establish bridges or ferries. The alternative method then provided was to transfer authority in these matters to the courts. Before the middle of the nineteenth century, New Jersey took more drastic steps to check this flood of legislation which was sometimes none too pure. In the constitution of 1844 it was provided that "The legislature shall not pass private, local, or special laws in any of the

following enumerated cases." The cases enumerated included vacating roads or public grounds, regulating the internal affairs of towns or counties, selecting jurors, changing the law of descent, granting franchises to railroads, changing of venue in civil or criminal cases, and providing for the management or support of free schools, as well as in certain other matters; nor should there be granted "to any corporation, association, or individual any exclusive privilege, immunity, or franchise whatever."

The enumeration thus set down indicates the subjects chiefly responsible for the evil that had made itself felt. The prohibition of the grant of corporate power by special act thus inaugurated in New Jersey was widely imitated, until at the present time it exists in as many as four-fifths of the states. The prohibition of forms of special legislation other than the conferring of corporate powers spread generally through the country, and the enumeration gradually became longer. The constitution of Alabama enumerates no less than thirty-one prohibited subjects. The inclusion of a prohibited list of twenty-three subjects in the Illinois constitution of 1870 at once reduced the volume of special legislation in a single session from 3435 pages to 228 pages.

Besides the prohibited lists of subjects, there came to be included in constitutions a clause providing that in "all cases where a general law can be made applicable," laws shall be general rather than special. The appearance of this somewhat vague statement straightway gave rise to a question as to who should determine when a general law would apply. When, in 1872, in Missouri, the contention was raised that a certain special act was void because a general law could have been made to apply, the supreme court of the state took the ground that this section of the constitution was merely a rule for the guidance of the legislature, and that that body was the sole judge of the necessity for special legislation. The judgment of the Missouri court has since been followed in a considerable number of states.

Where such a construction is put upon this provision, the effect is virtually to nullify the section. The legislature under such a construction, in order to disregard the direction, has merely to declare that a special act is necessary. In some states, however, the courts have taken the opposite view, and in a few cases the constitutions declare specifically that the applicability of a general law in a given situation is a question for the courts and not for the legislature to decide.

The wide recognition of the undesirability of the unlimited practice of special legislation is evidenced by the fact that at the present time everywhere, except in a very few states, some steps have been taken to check the flow of special laws. Very little valid argument can be advanced for special legislation having as its object the benefit of private individuals or corporations, or even of corporations of a quasi-public character. Some reasons having weight have been offered, however, with respect to municipalities. It is a fact that the needs of towns and cities may differ, growing out of variations in size and local conditions. Differences arising from variations in population have been provided for in many states through a system of classification, with special laws for various classes. There still remain differences due to other factors which may deserve consideration. Virginia has recognized this need and has attempted to meet it without throwing down the bars to indiscriminate legislation of this character. In that state it is provided that every bill embodying an act of special legislation must be referred to a committee on such legislation, and a written statement secured as to whether the object of the bill might be secured under general law or through court proceedings. The New York constitutional convention of 1894 did not prohibit special legislation, but, after enumerating a list of subjects upon which special acts could not be passed, prescribed that no private or local bill upon any other subject should include more than one subject, which was to be indicated in the title. It was further provided in the same document that in the case of a local act affecting a city the act should, after passing both houses, be sent to the city affected to be accepted or rejected by it. If rejected by the city, the law might still become effective by being passed a second time by the legislature. A still more radical method of avoiding the legislative evils involved in unrestrained legislation of this kind and at the same time recognizing local variations, is found in the "home rule" charter privilege granted to cities in a considerable number of states. Under this plan, each city is authorized to frame and adopt its own charter, subject only to general laws passed by the legislature affecting the whole state.

Procedure: Various and sometimes numerous limitations upon the legislature with reference to procedure occur in the several state constitutions, taking the form of provisions designed to secure publicity and deliberation of action to protect the minority, and to prevent action except by the will of the majority. These provisions sometimes assume the positive form of requirements laid down,

Constitutional restrictions

and in other cases the negative form of limitations imposed. Those stipulations with respect to procedure which are most commonly found in constitutions are the following: A majority of the members shall be necessary to constitute a quorum; bills may be recalled from a committee at any time by vote of the house; the yeas and nays shall be recorded on the passage of every bill, or at least on request of a small number of members; the sessions shall be open to the public except in emergencies; money bills shall originate in the lower house; no bill shall embrace more than one subject and that shall be clearly expressed in the title; every bill shall be read three times and on separate days, and bills shall receive the votes of a majority of those elected to the house to insure passage.

Subject to such requirements, the legislature is at liberty to adopt such rules of procedure as it will.

Beyond the limits of the provisions of the constitution with respect to organization and procedure, each house is free to adopt such rules as it sees fit. At the opening of each session each house formally adopts a code of rules. On these occasions it is customary to take over *in toto* the rules of the preceding session. No legislature in the limited time at its disposal wants to undertake a revision of the rules, so it happens that any modifications made from session to session are likely to be effected, not at the opening of the session with the definite purpose of improvement, but later, from time to time, as the direct result of some parliamentary squabble involving organization or procedure. The result has been that, except in a few states, the legislative rules have persisted for many years without much revision and are now hopelessly antiquated and inadequate to modern needs. In some legislatures where the rules are in this unreformed condition substantial progress can be made with business only under suspension of the rules. Even when not formally suspended, the rules are frequently ignored by common consent. In the closing days of a limited session when the pressure of business is great and the time growing short, it is regularly the custom in many states to suspend the rules. Unfortunately too often those whose measures will not bear the scrutiny of careful deliberation wait until the safeguards of the rules have been suspended to bring forth their proposals. They hope then in the rush of closing hours to slip their measures stealthily through to a favorable vote. The states of Massachusetts, Wisconsin, Nebraska and to some extent California, offer exceptions to the generally unsatisfactory condition of legislative rules. Massachusetts has long worked under

Rules

a simple but efficient code. More recently the other states mentioned have simplified and modernized their rules to make them workable instruments in the business of legislation.

Privileges
of
members

From time immemorial, the representatives of the people have enjoyed certain "legislative privileges," including freedom from arrest and freedom of speech, and these have found place in our constitutions. Freedom from arrest, except for treason, felony, or breach of the peace, is guaranteed during the actual sitting of the legislature as well as while going to and returning from its sessions. They are, however, liable to arrest and punishment for the commission of major crimes, even though the legislature is in session. This immunity from arrest was originally set up as a protection against the king's agents, but has been perpetuated as a matter of form long after that danger was removed. Sometimes the privileged period is extended to include ten or fifteen days before and after the session, and in some instances the privilege covers also freedom from the service of civil process.

A second privilege conferred is that a member shall not be questioned outside the chamber for anything said upon the floor in debate. This ancient privilege still has practical value. It enables any member to present to the house freely his beliefs and convictions, even though mistaken, without subjecting himself to the dangers of suit for slander or defamation of character. This privilege is sometimes abused by members, but this is seldom the case.

Legislatures are empowered to insist upon respectful and orderly behavior and civil speech by their members, as well as by others, in its presence. Though a member be safe from question outside for the words uttered from the floor of the house, any disorderly conduct or statements unbecoming a member may be dealt with by the house itself either by censure or, usually on vote of two-thirds of the members, by expulsion. Likewise, any act of disorder by any other person in the presence of the house, or any act in contempt of its dignity or authority is punishable by the house. A refusal to appear, to bring books and papers, or to testify before the house or one of its committees, has been held to constitute contempt.

For references see list at the end of Chapter Six.

CHAPTER EIGHT

THE LEGISLATURE (Concluded)

THE legislative process, which is long and somewhat complicated, may be summarized at this point, while the details of the several steps may be reserved for later consideration, one by one. The important stages are: (1) preparation; (2) introduction; (3) first reading and reference; (4) committee consideration and report; (5) second reading, with debate and possible amendment; (6) engrossment; (7) third reading and final vote; (8) repetition of the same steps in the second house; (9) reference to conference committee if necessary; (10) enrollment, signature by the presiding officers and presentation to the governor, and (11) action by the governor. Although there are variations in detail from the above routine, there is nowhere a material departure.

The legislative process:

One is accustomed to think of the history of a legislative measure as beginning when it makes its appearance as a bill introduced in one of the houses of the legislature. The fact is, however, that the measure may have passed through many vicissitudes before making its appearance in legislative halls.

Before a measure reaches the stage of introduction it must first have passed through the stage of preparation. During this preparation three steps are taken. There is first the determination of the object or purpose to be attained by the act; second, there is the selection of the particular means by which that end is to be attained; and, third, there is the framing of the language of the act.

1. Preparation:

In the first step, there must be born somewhere the idea that there exists some public need, real or fancied, to be met by legislative action. This may be a social need discovered by some worker in the practical field of sociology; an economic need perceived by the commercial or financial interests of the state; a need for improvement in the administrative machinery of the state growing out of the experience of some department of government, or it may be a need for a better adjustment of personal or property rights growing out of weaknesses discovered in the common law. It is possible, of course, that its source may be the selfish desire of some

(a) The idea

individual or group to promote their own advantage under the guise of a public benefit.

The suggestion is put forth by some one that "there should be a law" to attain a certain proposed end. Perhaps the idea is next taken up by one of the numerous voluntary organizations which exist to promote every imaginable sort of cause or to serve every conceivable end. Through the press, the platform, and even the pulpit in some cases, the suggestion is put before the public and a body of opinion created that "there should be a law." Gradually the idea crystallizes and the general object or end to be attained takes more definite form.

(b) The
means

The second step, the selection of the means by which the end is to be attained, is, if the promoters of the cause are wise, reached only after careful investigation. There should be a marshalling of the pertinent facts pertaining to the situation to be affected by the proposed act. There must be a study of the laws of other states and countries on the subject, of the experience gained from the results of the administration of such acts, and of judicial decisions bearing on the interpretation and constitutionality of these laws. Some of the most important pieces of state legislation have been based upon exhaustive investigations of this kind involving the application of highly specialized skill and the expenditure of great sums of money. Many of these are undertaken by voluntary organizations interested in particular reforms. Others have been inaugurated by the chief executive of the state or the head of an administrative department. Within recent years many special legislative commissions have been created with instructions to investigate, report, and sometimes to present definite proposals in the form of legislative bills. Unfortunately the statute books are replete with acts of an important character which represent the crystallization of an idea into a policy which has proved futile and unworkable because it was based upon faulty information due to inadequate investigation.

(c) The
expression

With the general end thus defined, and the best means of attaining it decided upon, the third preliminary step, the formulation of the bill in statutory language, is in order. The drafting of a bill is a task of precision calling for the exercise of considerable technical skill. It has been pointed out by Coode, an early master of the art of bill-drafting, that through defective drafting "a law good in its substance is rendered confused in its form, proportionally difficult to be understood and applied, and sometimes is even made inoperative, or, what is worse, a delusion and a snare."¹ No other

¹ Coode, *On Legislative Expression*, (ed. 1848) p. 6.

piece of literary composition, unless perhaps Holy Scripture, is liable to more searching analysis and criticism than are statutes. It is, therefore, necessary that a bill should be drafted in such language that it shall express neither more nor less than is intended, and that it shall be so drawn not only that its meaning may be understood, but that it cannot be misunderstood.

Examples are furnished in the acts of every legislature wherein verbosity and looseness of expression cloud the meaning of the statute or render it so meaningless as to make it ineffectual. Numerous examples of the absurdities which creep into statutes are quoted in the books. A statute passed in Ohio in 1919 speaks of "Major surgery, which shall be defined to mean the performance of those surgical operations attended by mortality from the use of the knife or other surgical instruments." In 1913, the legislature of Tennessee decreed that "It shall be unlawful for the owner or keeper of horses, mules, cattle, sheep, goats and hogs to run at large." One of the textbooks quotes from a statute of a state: "No one shall carry any dangerous weapon upon the public highway except for the purpose of killing a noxious animal, or a police officer in the discharge of his duty." Perhaps the most famous legislative product of this nature is the one which decrees that "When two trains approach each other at a crossing they shall both come to a full stop and neither shall start up until the other has gone."

No legislator, unless he be one of long and active legislative experience, undertakes to draft his own bills. Not infrequently it is a lawyer constituent of the member who is relied upon to put the measure into statutory language. In every state there has developed a group of attorneys, most of whom have seen service in the legislature, who have acquired skill and reputation as draftsmen and whose services are in demand for that purpose.

Among the legislative agents employed by the larger special interests to represent them about the legislative sessions are those who are skilled in the framing of bills, and who are eager to accommodate members by assisting them in the preparation of bills. Some of the most beneficent pieces of legislation on the statute books owe much to the skill in drafting of representatives of organizations promoting public welfare legislation. The member who avails himself of this volunteer and irresponsible source of aid cannot well complain if he finds that these friends have taken good care of the interests of those whom they are paid to represent.

In 1901, there was established in Wisconsin a legislative reference

Bills
drafted
by:

(1) Attorneys

(2) Lobbyists

(3) Public bill-drafting agencies

library in which it was undertaken to gather all available information upon a wide variety of subjects which might come before the legislature, for the use of members of the two houses. It was found that merely to place the information within the reach of the legislator was not sufficient, since he was scarcely more familiar with the methods of research than with the art of bill-drafting. To meet this further need, members were invited to bring to the library their ideas and projects. The members of the library staff were able in the light of the information assembled to develop the ideas of the legislator, acquaint him with experience elsewhere, warn him of the pitfalls to be avoided, and finally to cast his proposals into correct language for introduction as a bill. This plan proved so popular that legislative reference libraries or bureaus have been set up in more than half the states. Sometimes this work is performed through the state library and sometimes in an independent bureau. New York, though not maintaining a reference service, provides a corps of legislative draftsmen for the assistance of members of the legislature.

2. Introduction

Legislative bills may be introduced by any member without limit as to number. In several states there are constitutional limitations or limitations under the rules of the houses, as to the time of introducing bills. In some cases they cannot be introduced after a certain number of days of the session have elapsed, and in others, within a prescribed number of days before the end of the session. In Nebraska, no bill except general appropriation bills may be introduced after the twentieth day unless upon a subject brought to the attention of the legislature by the governor in a special message. California and West Virginia seek to secure the same end by restricting the introduction of bills to the portion of the split session before the recess, except in case of emergency. When such restrictions are not constitutional in origin they are frequently nullified by the houses themselves by suspension of the rules.

Number of bills introduced

Introduction takes place in several ways. A member may, when the proper order of business is reached, rise in his place and offer his bill and ask that it be referred to a certain committee; or, in many states, a bill may be introduced more informally by placing it in the clerk's hands. In Massachusetts an ancient practice is preserved by which bills are introduced by a member by presenting a petition with the bill attached.

The number of bills introduced in each house runs into the hundreds, and sometimes reaches as many as a thousand, in a single

session. In New York in 1923, 3862 bills were introduced, while in the same year there were introduced in the legislature of Michigan, 892.

The bills are upon every conceivable subject and of all degrees of importance or triviality, bounded only by the imagination of the members or of their constituents. Since no responsibility attaches to the introduction of a bill nor any obligation to support it after it is before the legislature, members are usually willing to accommodate any citizen by introducing any measure handed them. If the bill is one in which the member is not interested or to which he is personally opposed, it is sometimes announced as being introduced "by request." There seems to be a feeling widespread in some regions that the right of citizens to propose legislation should be coextensive with the right of petition. The freedom to introduce bills of all kinds and in any number enjoyed by members not only of state legislatures but of Congress, strikes the foreign observer as a peculiar feature of our system. The differences in this particular between most other countries and our own suggest the whole question of legislative leadership. A glance at the practices in countries working under the parliamentary system may render clearer by contrast the difficulties under which our legislatures labor with respect to leadership and to the mass of legislation with which they are called upon to deal.

Although the number of bills introduced in our legislatures is excessive, and the number enacted into law is large, it is easy to overestimate the seriousness of the evil. Startling statements are made concerning the number of bills introduced in the legislatures of all the states in a single year, and of the thousands enacted into law. These statements are entirely misleading, since no one person is affected save by those passed in his own state. It must be remembered, too, that while a certain number of acts in each state do affect the substantive law relating to persons and property, these constitute but a small proportion of the whole. Many acts passed are merely of an administrative character and concern minor details of governmental structure and operation. Many more are special in character and affect individuals or small groups only. Another large number are not in reality new acts, but virtually amendments to former acts, designed to cure defects in their form or substance. While the problem presented by the excessive number of bills introduced is a serious one, the true state of affairs with respect to the

volume of legislation is by no means what sensational writers have pictured.

Legislative
leadership

In parliamentary countries the question of political leadership is relatively a simple one. A leader is officially selected by the political party from among the members of the legislature to become the head of the party both within and outside the legislature. Upon the accession of that party to power the leader becomes also the working executive head of the government. Thus this chief may be said to combine leadership of a three-fold kind: partisan, executive, and legislative. There can be no doubt of the location of either leadership or of responsibility. Responsibility for the preparation of the legislative program, for putting the program into statute and, finally, for its administration when enacted into law is definitely fixed in a small group, of which the premier is the acknowledged head.

In governments organized upon the principle of the separation of powers, the problem of responsible leadership presents various aspects of greater difficulty. This function in the three fields of activity: partisan, legislative and executive, is normally found in separate hands. Moreover, in too many cases leadership in each field is not clearly identified and held responsible for results. It is a fact that real legislative leadership is sometimes not found within the houses at all, but, if it exists anywhere, it will be found entirely outside that body.

Legislative leadership under any system of government involves both the preparation and presentation of a program, and the securing of its enactment into law. Under our own system the party platform might be expected to present a program of legislation, but it has failed to perform that service. From early days the governor's messages have embodied suggestions for legislative consideration, but they were for more than a century uttered in such a tentative fashion that they attracted little attention either within or without the legislature and carried little weight. But as no formally recognized leadership developed within the legislature, the governor came to be relied on more and more generally to act in that capacity. In a majority of the states to-day it has become a recognized practice for the governor to offer a concrete program of action for that body. The measures thus proposed by him are spoken of collectively as the "administration program" and individually as "administration bills."

The speaker, the floor leader and the caucus have developed as instruments of leadership for the majority within the house itself,

but the span of their life is brief and their prestige outside the house is negligible. Under these circumstances the governor's budget authority and his veto power, reinforced by his executive powers of appointment and removal, and supplemented by the party prestige of his office, have united to make him the most influential single individual both in the preparation of legislation and in shaping its course through the two houses.

The recognition of an official legislative leadership in parliamentary countries has brought about a clear distinction made between "government bills" and "private members' bills." The ministry, *i.e.*, the executive branch under the leadership of the prime minister, is expected to introduce all important measures. As leaders of the majority party, they prepare a program of legislation to carry through, which includes the preëlection pledges of the party as well as a limited number of other measures which they wish to enact. These measures constitute a program on which the ministry stakes its political life. If these are not accepted by the legislature substantially as offered, the ministry must either resign office or appeal to the voters for support in the form of new members sufficient to constitute a majority in favor of their program. If the voters do not return such a majority there then remains no alternative to resignation.

"Sifting"
of legis-
lative
proposals

The "government bills" which constitute the program of the majority party, though few in number, are very important. Since the consequences of mistake are so grave for the party, they are prepared only after careful investigation and are drawn by skilled draftsmen. Upon these few bills and these alone is public interest focused.

Private members, *i.e.*, those not of the ministerial group, may introduce bills either of a general or special character but they are seldom on subjects of great general interest. They are not often accorded more than a small portion of legislative time, and, if they presume to deal with problems of general concern, they are given scant consideration. The theory is that since the ministry represents the majority of the legislature which has undertaken the responsibility of conducting the government, it should be given the right to determine what measures shall be presented for consideration. The ministry refuses to embarrass the success of its administration by the injection of other matters by irresponsible persons. The result of this system is that the number of bills, other than of a purely local or special nature, to come before any session of the

legislature is comparatively small. The few bills presented to the body for consideration, are, however, of great importance.

The mass of legislation presented in those countries is further diminished by the fact that the executive, through what in this country are called administrative rules and regulations, is authorized by statute to dispose of many matters which here would be made the subject of legislative action. A net result of their legislative methods is to avoid the flood of irresponsible bills with which our legislatures are burdened, and to permit the time of the body to be devoted to the consideration of a program which has been worked out coherently and for which a definite group stands responsible.

Thus it appears that the recognition of an official legislative leadership in parliamentary countries has led to the more systematic preparation of a definite legislative program, and has had the secondary effect of limiting the gross amount of legislation demanding consideration.

Sifting of
bills in
the states:

(1)
"Pigeon-
holing"

(2) "Cau-
cus meas-
ures"

(3) "Ad-
ministra-
tion bills"

There are evidences of a consciousness in this country of the need of a process whereby some measure of responsibility for a legislative program may be fixed, and whereby legislative grain may be separated from the chaff. Certain legislative practices now widely accepted serve this end. One reason why the pigeonholing of many bills in committee is tolerated without protest is because, crude and irresponsible as the device is, it serves as a means of weeding out and disposing of a mass of legislation which should never have been introduced. Again, the growing disposition of the majority caucus to give preëminence to certain bills by declaring them to be "caucus measures," as well as to cause the preparation and introduction of bills and to direct committee action, is all an indication of a developing sense of the need of a coherent legislative program for which responsibility can be fixed.

In the third place, there is a tendency, without formal action, to arrive at the same result through recognition of the governor as a leader in legislation. Within the present century it has become the custom of the governor, both in his campaign addresses and in his inaugural message, to declare a program of legislation, known as the "administration program," to which he stands committed and to which he in a measure commits the party. These declarations by the governor are ordinarily followed by the introduction in the legislature of a series of bills which have come to be known as "administration bills."

A few years ago the legislature of Illinois gave formal recognition

to the governor's program by adopting a rule providing for the recognition of certain measures proposed by the governor as "administration bills" and giving these precedence in the order of business.

The introduction of the executive budget has helped to accentuate the importance of the governor and of his program in legislation. When there is a close party organization in the legislature and when the governor is of the majority party, this program of the executive is likely to be enacted into statutes.

In the fourth place, the rules of both houses in Nebraska provide for a "sifting committee" of nine and thirteen members respectively, to be appointed when the pressure of business demands it. The committee's function is to select and report such bills as it deems most important. Bills so reported are given precedence over all other matters except appropriation and claim bills.

(4)
"Sifting
commit-
tees"

The "model constitution" prepared by the National Municipal League proposes to open the way for the presentation of a matured program of legislation through the action of a legislative council. This body, to be composed of the governor and a small group of legislators chosen by the legislature itself with authority to meet at any time, is authorized, among other things, to prepare and present to the legislature with recommendations such projects of legislation as it may see fit.

None of these plans have met with wide formal acceptance or made any deep popular impression. The tradition that the legislature is an open forum of democracy is so strong that it will be difficult to reconcile the public to any formal plan to check the free and unlimited right of members to introduce bills.

Whether by constitutional mandate or by legislative rule, the early practice of three readings of every bill upon separate days is adhered to, at least in form. The first reading takes place upon the introduction of the bill and is accomplished by reading the title only. This rule was introduced long ago as a means of publicity and to give members information concerning the provisions of bills. With the present facilities for printing, the reading of bills aloud for information is a useless expenditure of time. The common practice, though not everywhere observed, is that upon first reading all bills are printed so that not only the legislator, but any citizen who may possibly be affected, may have opportunity to examine the measure for himself.

3. First
reading
and
reference

The futility of retaining procedural stipulations in constitutions

when they no longer serve any useful purpose, and the absurdities which may ensue, are well illustrated in the case of the three readings. It is sometimes stipulated that on its final passage a bill shall be read in full; but in spite of this, in the rush of the last legislative days it is not uncommon for the presiding officer to interrupt the clerk after a few sentences have been read and to put the question forthwith. It has happened when there was a desire to comply with the letter of the constitution, that several clerks have been set to reading at one time so that a number of bills can be read simultaneously.

The term "reading" as employed in legislative procedure has, therefore, come to have a merely technical meaning, indicating stages at which a bill comes before the whole house for consideration and appropriate action.

The requirement that the three readings shall be upon separate days is commendable since it serves the purposes not only of information but of deliberation, and prevents "snap" legislation. The value of the rule is evidenced by what sometimes takes place near the close of a session when the rules are suspended and constitutional mandates ignored. At such times sinister and selfish interests bring forth their measures which they have kept under cover awaiting a favorable moment, and are able frequently in the confusion of the hour to secure their rapid advancement through the legislative stages to final passage before their significance is grasped.

4. Committee consideration

Upon first reading, the bill is referred, either automatically under the rules, or by the request of the person introducing it, or by the will of the speaker, to some committee. The committee system is the central feature of legislative organization for the transaction of business. The great mass of proposed legislation brought forward in legislative bodies has led to the development of a system of committees vastly more elaborate than that in other countries. Two ends are secured thereby: economy of time and some slight degree, at least, of specialized knowledge.

With the introduction of several hundred and sometimes even a thousand bills in each house, any real consideration by the whole house of more than a few important measures would be manifestly impossible. Hence division of labor suggests itself. The concentration of attention of the small group which makes up a constituted committee on bills relating to a particular subject, serves in some measure to secure specialized attention, if not specialized knowledge. It is also true that in constituting committees, some attempt

is made to give place on a particular committee to any person who is known to possess information on, or taste for, the subject covered by the committee.

Committees may be classified as special or standing, each playing a distinct and important rôle in the legislative process.

Special committees are, as their names suggest, designed for a special purpose. They are created at any time when a particular act is to be performed or a special investigation made. A special committee is sometimes appointed to represent the house in attendance on some formal ceremonial occasion. One or more such committees are created at almost every session in some states to investigate some administrative department or institution, and to report their findings, or to investigate some problem demanding intensive study with a view to recommending legislation.

Standing committees are those to which reference has already been made, and which have been called into being under the application of the principle of the division of labor. They are provided for in the rules, are filled at the opening of the session, and continue throughout its duration. With respect to the nature of their work, standing committees are either procedural or substantive. The chief procedural committee is that on rules. Its function is primarily to recommend at the opening of the session a code of rules to govern the procedure of the house and, from time to time, such modifications of these as may seem desirable. Since it is customary to adopt substantially without change the rules of the previous session, its work in this connection is not burdensome. Because it is a "privileged" committee, *i.e.*, having power to report at any time and to demand immediate action upon its report, it has been made use of by the majority leaders in some states, just as in Congress, to control the course of legislation. Other procedural committees found in some states are those on engrossed bills, enrolled acts and elections.

The number of legislative committees varies widely from state to state. In Wisconsin there are five in the Senate and twenty-three in the House, and in Rhode Island eleven in the Senate and fourteen in the House. At the other extreme stands a group of states in the Middle West, of which Indiana is a typical example. That state had, in 1927, forty-nine committees in the Senate and fifty-eight in the House. In Illinois, in 1913, in a Senate of fifty-one members, there were fifty-one committees, while at the same time there were sixty-seven in the House. Although Massachusetts has but five committees in the Senate and seven in the House, it has thirty

Commit-
tees
classified:

1. Special
committees

2. Standing
committees

Number

joint committees, which will be referred to later, which perform the greater part of the committee work. On the average the number of committees in each house will approximate forty.

Members

Likewise, the number of members on committees varies. In the Wisconsin Senate each committee has either five or seven members, and in the House, nine or eleven. In Nebraska, with two or three exceptions, the committees of the Senate consist of from three to nine, and in the House, of from five to eleven members. On the other hand it is not uncommon elsewhere to find committees of from twenty-five to thirty members, and running occasionally as high as forty. In Illinois, in 1917, one committee included forty-three of the fifty-one members of the Senate. The combination of an excessive number of committees and of large membership results, of necessity, in most members being placed upon several committees. In Illinois, in 1913, one member was on as many as thirty committees, and in 1919, seven of the senators were on as many as twenty committees each. These are, however, extreme cases, and the number of committee assignments for each member would not in most states exceed from four to seven.

But even under the average conditions a committee system thus constituted could not be otherwise than ineffective. While it is desirable that committees should represent some variety of viewpoint, it is a fact that careful consideration of details by a large group is impracticable. If frequent sessions of committees are to be held, conflicts in time of meeting are inevitable and to secure full attendance at protracted sessions becomes impossible. Under such conditions it is impossible to build up in a committee an *esprit de corps* which will result in careful and systematic work. Nor will the individual member under such circumstances feel the proper sense of personal responsibility for the recommendations of his committee.

Joint committees

In Wisconsin, Massachusetts and Connecticut, most of the work is done through a system of joint committees composed of members of both houses. In Massachusetts, where the system is most highly developed, there are in the two houses a few separate committees; but there are thirty joint committees, to whose hands all important matters are referred. In other states a certain number of such committees is found but their action is confined usually to somewhat formal matters and is likely to be of a perfunctory sort. By the joint-committee system there is effected a considerable saving of time for both the houses and the persons having an interest in the

measure in question; and consideration in this manner, once for all, is likely to prove more careful than two separate considerations. Bills are taken up in joint committee when referred from the first house, and a report is made to both houses. When the measure reaches the second house the report of the joint committee is before that body and the bill can pass directly from first to second reading without reference. In Rhode Island, although separate committees are maintained, it is the custom on important bills and especially when public hearings are to be held, to hold joint meetings of the corresponding committees of the two houses. In some other states the custom prevails of holding joint sessions upon the general appropriation bill.

As has been stated in another connection, assignment to committees in about two-thirds of the states is made by the speaker. In the remaining states, this function is performed by a committee on committees. In the Senate, since the lieutenant governor is not a member of the body and may not be even a member of the majority, committees are usually chosen by a committee on committees.

Member-
ship of
committees

Whatever the number of committees, it will be found that the majority party consistently reserves to itself a safe working majority upon each, although it is customary to accord to the minority certain representation in every instance. Upon matters of party significance, the views of the minority members upon the committee are given scant consideration. Examination of the membership roll of committees discloses the fact that the names of a small group of majority leaders reappear on a number of the most important of these. The committees which ordinarily are considered to be among the most important are those on ways and means (or finance), appropriations, judiciary, rules, municipalities (or cities), education, public utilities, public institutions, and highways. An enumeration of such committees would vary considerably with time and place.

In most instances the name of the committee is a sufficient index of the nature of the bills sent to it for consideration. Of the more important among them, perhaps the work of the judiciary committee alone demands explanation. Its function was originally to consider bills which would modify the rules of the common law or which involved the question of constitutionality. It has gradually come about that its field of action is much broader than was originally contemplated. Because of the nature of the matters sent to that committee, it was appropriate that it should be composed of lawyers; and the importance of these questions caused the leaders of the

majority, who are not unlikely for the most part to be lawyers, to desire places on this committee. The judiciary committee thus in time gained a special preëminence and came to be looked upon as a dominating group. This favored status served in turn to draw to that committee rather than to the one indicated by the subject matter of the bill an increasing number of the more important bills to which this little group of leaders wished to give their personal attention.

The ways and means committee, usually known in the Senate as the finance committee, and also the committee on appropriations, since they are concerned with problems of finance which touch every branch of government, hold high rank in relative importance. Hence it is but natural that places upon these, too, should be eagerly sought after. Other committees, such as public utilities, municipal corporations, and the others above mentioned, because of the magnitude of the interests involved, afford places of great power. As in the case of the judiciary committee, the leaders of the majority reserve for themselves places upon these most powerful committees, and are inclined to enlarge the scope of activities of these bodies beyond their normal boundaries.

So far have these influences for the concentration of business into a few committees proceeded, that it has served to fortify greatly the control of a small group of leaders over the more important business before the legislature. Investigation has shown that in the Indiana Senate from 1911 to 1921, during which time there were upon the average forty-two committees in existence, forty-nine per cent of all bills introduced were sent to one or the other of five committees. It seems likely that similar investigation in many other states would show a like condition.

In states where the committee system has been brought to greater perfection and the number of committees is not excessive, each of them is furnished with a room and a clerk. Elsewhere there is no clerk and meetings are held wherever space for the particular meeting can be secured. Bills referred to a committee are in the custody of the clerk if there be one; otherwise, the chairman of the committee is responsible for the bills while they are in the hands of his group. Everywhere there is a tendency for the chairman to dominate the deliberations of the committee, and he frequently determines in large degree the fate of each bill which comes before it.

When bills reach the committee the theoretical rule of procedure demands that each bill shall be taken up in the order in which it

comes to it, discussed with reference to both form and substance, hearings held when found desirable, and a report made to the house recommending the disposal to be made of the bill. The actual procedure commonly departs from this order, the degree of the departure depending upon the extent to which the formal rules purport to control committee procedure and the spirit in which the rules are observed.

Work of
committees

If the several state legislatures are studied with respect to variations in this direction, there will be found at one extreme a small group, including notably Nebraska and Massachusetts, in which the committees are closely controlled by rule and the rules strictly enforced. In Nebraska, the rules prescribe that regular committee meetings shall be held within certain specified hours of the day, that printed schedules of the time and place of all such meetings shall be published, and that final action on any bill shall be taken only at a regular meeting. The notice of the meetings of Senate committees must include a list of the bills to be taken up. The Senate further requires that final action on all bills shall be taken at a meeting during the daylight hours, and that every bill sent to committees shall be reported back within four days after it is referred. In both houses records of proceedings in committee meeting shall be kept, and in the House of Representatives the final vote must be made a part of the report of the committee.

In Massachusetts the limitations placed on the proceedings of committees while bills are in their hands are less strict than in Nebraska, but no bill affecting the rights of private individuals or private or municipal corporations can be acted upon until notice shall have been given of its pendency. Committees are required before a fixed day to report all bills referred to them. Furthermore, bills must be taken up for consideration in the order in which they are reported, and no bill can be made a special order except by a vote of four-fifths of the members present. Thus it will be seen that in these states the committees are distinctly the servants of the houses, and the destiny of any bill can be affected by a committee only through its report thereon to the house.

In most states, when a bill reaches a committee, it is considered, not in the order of reference, but at the will of the majority of the committee, or perhaps more often at the will of the chairman. If the majority are opposed to the bill or if they think it of too trivial a nature to deserve attention, they may never take it up or, if they do consider it, they may take no final action and make no report.

Under such circumstances the bill is said to have been "pigeon-holed," and its further progress is effectually blocked.

It is always within the power of the house when a committee refrains from reporting back a bill, to "discharge the committee from further consideration" of the bill, *i.e.*, to recall the bill from the committee. But since the important committees to which the great mass of bills are referred are controlled by the leaders of the dominant majority group, the probability of such action is negligible.

When a bill is taken up in committee it may, if of special importance, be handed to a sub-committee for more careful and extended study which may even include consideration by experts retained by that body for the occasion. If the bill be one of general public interest or if there be a reasonable demand, a public hearing may be held at which interested parties may appear and be heard. In Massachusetts, it is customary to give opportunity for public hearing on all bills.

Little progress has been made in a century in developing the internal organization and methods of state legislatures to adapt them to the increasing burden laid upon them. The organization and procedure now in force are in most cases archaic, excessively clumsy and ill-adapted to their function. Perhaps no one thing would contribute more to relieve this situation than a reform of the committee system as it now exists in a vast majority of the states.

The way to a solution of the problem has been offered by a few states such as Massachusetts, Wisconsin and Nebraska. The reduction of both the size and number of committees, and the employment of joint committees in those states, as well as the introduction of devices to systematize their procedure, have transformed them into efficient engines for performing their work. Rules adopted to prevent the bunching of great numbers of bills in the hands of a few committees and requiring committees to report on all bills within a fixed time, would serve to distribute the work more evenly and assist in reducing the congestion in the last days of the session.

The
lobby

It is proper and highly desirable that every citizen, if he believes that some project of legislation which is pending would be of advantage to his legitimate interests and not injurious to the public, should have the privilege of making his views known and of supporting them before the members of the legislature by facts and arguments. In like manner, he should have the liberty to present his case concerning any measure which he believes to be undesirable.

Used in its broadest sense, the lobby comprises all those persons who undertake to influence the course of legislation by presenting facts or arguments bearing upon proposed measures.

Popular usage, however, has given to the word a somewhat sinister meaning by restricting its application to those persons who are impelled by some selfish motive, and even more especially to those who represent the selfish interests of others for pay. There is the further implication that not only does the lobby serve an interest which is selfish, but one which runs counter to the best interests of the public. It is true no doubt that persons who fall within this opprobrious meaning of the word are present at every session of the legislature; and unfortunately it is not unlikely that they are more numerous and sometimes more effective than those having a more commendable purpose.

The application of the term "lobby" to this group of persons arose from the fact that they are usually conspicuously active in the public lobbies and corridors just outside the legislative chambers, through which members must pass in going to and from the sessions. However, much of the most effective lobbying goes on in committee rooms, over the dinner table, or in quiet talks behind the closed doors of hotel rooms.

As a matter of fact, not all to whom the name "lobbyist" is often applied are actuated by sinister or even selfish motives. Their purpose may be of the highest order, and they may place before the members information or viewpoints which might otherwise be overlooked or misunderstood. Public-spirited or disinterested citizens may appear, representing what they believe to be the public interests, to urge or oppose legislation. Organizations created to promote charitable, educational, or social reforms; bodies representing economic groups such as labor organizations, boards of trade, and professional societies, appear to represent interests which can scarcely be branded as selfish under any ordinary meaning of the term. The organized facilities of the legislature for fact finding are so ill-developed that it may be that only through the presentation of facts unearthed and presented through the zeal of these organizations will the legislature come into possession of the information necessary to a wise conclusion.

The group of lobbyists includes persons, both men and women, from all stations of life, working for every sort of legislative project, good and bad. The paid professionals are frequently politician-lawyers and ordinarily include some ex-members of the legislature

who, by their wide acquaintance in political circles and their knowledge of legislative methods, have developed skill in the arts of legislative persuasion.

The methods employed by lobbyists are various and sometimes devious. They include, among the more obvious, the sending of personal letters, the distribution of printed matter, appearance at public committee hearings, enlisting the influence of influential constituents of individual members, and, especially, personal contact with members.

It is natural that the persons working disinterestedly in worthy public causes should usually be persons of high character whose methods are at least not open to charges of corruption, even though their zeal sometimes carries them beyond the bounds of good taste. The paid professional lobbyists, representing interests playing for high financial stakes, have liberal funds at their command. Investigations have revealed instances where, when the members who are susceptible to such influence have been discovered, large sums of money have been spent for entertainment, personal loans, retaining fees, and less skillfully camouflaged forms of corruption. Such revelations appeal to the imagination of the public and gain great publicity through the press; but fortunately extreme examples of this kind are less numerous than is popularly supposed. The great majority of lobbyists rely upon established friendships and their own arts of personal persuasion to obtain their ends.

The evils involved in the practice of lobbying, using the word in its narrower sense, have been clearly enough perceived for a long time; but they have been difficult to control. The legislatures of Georgia and Arizona are directed by their constitutions to legislate to suppress lobbying, and many other legislatures have passed laws to the same end. To devise laws which shall curb the activities of the pernicious representatives of special and anti-social interests, and at the same time permit those who have an honest purpose in presenting their facts and ideas to their representatives, has taxed the ingenuity of law-makers.

The form of legislation most commonly adopted requires that any person who for compensation attempts directly or indirectly to promote or oppose any bill during its consideration by the legislature shall register as a lobbyist in some office, usually that of the secretary of state, stating the name of his employer and specifying the legislation with which he is concerned. Within a specified time after the adjournment of the legislature the lobbyist must file a sworn state-

ment of money received and disbursed by him in connection with his employment. New York, Massachusetts, Wisconsin, and Maryland, as well as a few others, have adopted variants of this general plan of control. Thus far such laws have proved difficult of application in the few localities where enforcement has been seriously attempted.

After the bill has been considered the committee may dispose of it in one of several ways. It may report, recommending that the bill pass; that it pass with amendments proposed by the committee; that a bill offered by the committee be substituted for the original, and that the substitute pass and the original be "indefinitely postponed"; or, finally, that the bill be indefinitely postponed. Instead of any of these dispositions, the bill may be pigeonholed as described above. Since it is not parliamentary courtesy to move that a bill be not passed, the more euphemistic phraseology, "indefinitely postponed," is usually substituted, though the ultimate result is the same. The minority of the committee may at any time present a minority report making recommendations at variance with those of the majority. This ordinarily happens only in case of bills of some importance; or it is sometimes resorted to when some political advantage is sought thereby.

The influence of the speaker over the fate of bills through the power which he exercises in some states over the reference of bills to a particular committee has already been alluded to. This power, when coördinated with the freedom of committees to pigeonhole bills, offers the favorite means, without a direct negative vote, of disposing of proposals of legislation which are unacceptable to the majority. In some legislatures these tactics have become so noticeable that certain committees become popularly known as "graveyard" committees. Such committees are selected with a view to the possible kinds of bills which it shall be their duty to put to sleep. An example of this existed in an eastern industrial state some years ago when there were many labor bills coming before the legislature. Since the majority party was dominated by employers of labor, a committee to pigeonhole such bills was especially "hand-picked" from among the members from exclusively rural districts. These members could perform their allotted function in this respect without resulting embarrassment to them at the next election.

One must conclude that the committee system is in most of the states seriously in need of overhauling. The weakness due to structural defects has already been pointed out. The undue number and

size of committees, with the consequent overlapping of membership, create a situation which, if bills were distributed according to any rational principle, would be intolerable. The custom of concentrating the great mass of bills in the hands of a few committees lessens this evil but creates one perhaps even greater. Certain committees are thus so overloaded that they cannot give adequate attention to any save a few of the more important bills. An inevitable further result is that the individual member in either case ceases to feel the proper degree of personal responsibility for committee action. The overlapping, together with the inadequate physical accommodations in the shape of committee rooms furnished, produces a haphazard practice in holding committee meetings. The committee files are sometimes the pockets of the chairman, and committee action on bills sometimes takes the form of a poll of the members by the chairman.

Another criticism which applies perhaps to some degree in every state except Nebraska is that although the real decision of the fate of a bill is determined in the committee room, what goes on there is secret, and the forces which there determine final action remain unknown to the public. The answer, which is not without some weight, is that some degree of privacy is necessary, since the free and informal interchange of opinion among members needed for a thorough discussion of a measure could not be had in the presence of spectators.

Not the least among the defects of the present system, but one for which the remedy is clearly indicated, is the tendency to delay the reporting of bills until the time remaining for discussion on the floor of the house is inadequate. This is in large measure due to political reasons. If the members have not yet taken definite action, there is always the possibility of shaping the action to be taken to new developments in political expediency. Then, too, to hold a bill in committee with its recommendation yet uncertain gives to the members of that group a leverage upon which to secure from friends of the pending bill favorable consideration for bills in which they themselves are interested. In other words, so long as a bill is in committee it may be made a basis for legislative trading. A rule such as that in Massachusetts requiring a report on every bill by a certain day would, if strictly enforced, offer a means of escape from this evil.

When a committee reports a bill and the report is taken up by the house, if there be a minority report, the question is first upon

the substitution of the minority for the majority report. If the result be in the negative, or if there is no minority report, the question is: "Shall the report be accepted and the bill advanced to second reading?" If the vote is favorable the bill goes to the calendar. The calendar is merely a list or docket of bills awaiting action. Bills are entered on the calendar in the order in which they are reported, which is also supposed to be the order in which they are to be taken up for second reading.

When in the regular order of business the House proceeds to consider bills upon second reading, the first bill upon the calendar is called up for action. The bill is regularly read in full unless this is especially dispensed with, and if there is debate on the bill it takes place at this point. This procedure is varied in some states by reading by title only at this stage and reserving debate until the third reading. The bill may be read and considered either as a whole or section by section; and any member may speak upon it, amendments may be offered, and obstructive tactics may be resorted to by the opposition in an effort to defeat the measure. Motions may be offered to lay on the table, to postpone indefinitely, to amend by striking out the enacting clause, and by demanding a roll-call at every opportunity. These are but a few of the dilatory parliamentary moves known to the experienced members.

5. Second
reading

The report of a committee does not inevitably determine the fate of a bill; but a recommendation of indefinite postponement is usually as effective in killing it as is pigeonholing. In the one case it may be passed in spite of the adverse report, and in the other it may be recalled by vote of the House from the hands of the committee; but in practice neither of these steps is often taken. Somewhat rarely a favorable minority report is accepted in place of an adverse majority report and the bill advanced. In case the report of the committee is favorable, no corresponding presumption of passage is warranted. A favorable report may be said only to create a certain probability in its favor. The freedom with which the House overrides the recommendations of its committees is but a natural result of the manner in which committees are selected, of the perfunctory manner in which they do their work, and of the prejudiced character of many of their recommendations.

When considering bills upon second reading, it is customary in some states for the House to resolve itself into a committee of the whole. By this device the more formal rules which govern the deliberations of the House are laid aside and debate becomes more

Committee
of the
whole

general and informal. When sitting in committee of the whole no difference from the regular session is apparent to the spectator, except that the regular presiding officer has been replaced by a "chairman of the committee," and that restraints on debate are somewhat relaxed. Votes taken in the committee are of the nature of recommendations and do not bind the House.

At the close of the discussion it is voted that the committee "rise and report." The presiding officer resumes the chair and the chairman of the committee of the whole makes formal report of its recommendations. The vote then is: "Shall the report of the committee of the whole be made the vote of the House?" The adoption of this motion constitutes passage upon second reading and the bill then goes to be engrossed.

The procedure above described for bills upon second reading constitutes what may be called the normal procedure, but it is one that is frequently departed from, especially with respect to the order in which bills are considered. As the session progresses and committees report bills with increasing frequency, the calendars become longer and longer. Bills cannot be discussed and disposed of with sufficient rapidity to keep the calendars reasonably clear, and congestion results. If, under such circumstances, the rule of taking up bills in the order of their appearance on the calendar were strictly adhered to, it might happen that an inordinate portion of the legislative time would be consumed in the consideration of minor matters. Bills of importance, appropriations, administration matters, and measures of wide public interest might be reached only at a date too late to permit adequate deliberation, or perhaps not at all. As a means of insuring to these more pressing matters prompt attention, it is customary to provide in the rules that any bill may be made a "special order" for a certain time. The effect of such a vote is that when that certain time arrives, whatever matter is then before the House is laid aside and the matter which has been favored as a special order is taken up and disposed of. The majority, unless it is strong, may find itself prevented from employing this procedure since, under the rules of many legislative bodies, a special order may be secured only by an extraordinary majority. This embarrassment is relieved in a number of states, among which New York is notable, through reliance upon the rules committee to put through the majority program.

The committee on rules differs from other standing committees in that it is a procedural rather than a substantive committee. It

deals not with the subject matter of bills but with procedure. Its normal duty at the beginning of the session is to recommend a body of rules, and at any time subsequently to offer amendments to these rules. It is, in the states referred to, a small committee composed of the majority leaders, including the speaker and the floor leader. It is a privileged committee with power to sit at will, to report at any moment, and to demand for its report immediate consideration. When the leaders desire to advance their program over other bills the rules committee, taking advantage of its composition and its privileges, brings in a special "rule." The rule may make the desired bill a special order for a certain time, limit time for debate, or fix the time for a final vote on the bill, and the committee may demand an immediate vote upon the rule thus proposed. Since a proposal to change the rules requires merely a majority vote the leaders are enabled to attain their end when the necessary two-thirds cannot be secured for a "special order." By this means the minority is ridden over rough-shod and the rank and file of the majority party secure only such consideration as their subservience to the leaders may secure for them. Those not in the favor of the inner group are compelled to sit by and see their own bills sidetracked like slow freights, while measures favored by the members of the rules committee go whizzing by one after another like express trains, to a destination which their own may never be permitted to reach. Thus a device born of necessity due to the lack of formal responsibility for a legislative program may become the instrument of a legislative oligarchy. It is obvious that such a situation could develop only where, as in New York, party lines are closely drawn and the majority thoroughly organized.

Influence
of the
committee
on rules

It is probable that during the discussion of a bill amendments will be adopted which either add or strike out some word or words. It may happen that many such changes are made to a single bill. The next step, then, after the bill has passed second reading, is to send it to be engrossed. Engrossing of the bill consists in redrafting it so as to incorporate the changes effected by amendment during debate. If it is an important one and the changes extensive, the bill is reprinted. In reprinting, it is customary to include both the matter in the original draft and that inserted by amendment, indicating each in the reprint by the use of different type or some other obvious device. Thus one is enabled to see at a glance just what changes have been made. In some legislatures there is provided a committee on engrossed bills on whom rests the responsibility of making sure

6. En-
grossment

that the changes ordered and no others are included, either by accident or intention, in the new draft.

7. Third
reading
and final
vote

After being engrossed, bills are placed on the calendar for third reading. When taken up for third reading they are again considered in the order of their appearance unless favored by being made a special order. If debate and an opportunity for amendment has been afforded on second reading, debate on third reading is confined to the merits of the bill as a whole, and amendment can be made only by unanimous consent. Such consent is likely to be given only for the purpose of correcting some obvious clerical error which effects no change in the substance of the bill. If, however, some serious defect or some new phase of the subject be injected into the discussion, the bill may be sent back to the committee for further consideration, though this seldom occurs. To accept amendments to a bill in debate on third reading is a dangerous practice. No further opportunity is allowed for mature consideration, and hence this is a favorite occasion for efforts to be made to tamper with a bill by securing the introduction of "jokers." Jokers are words or even phrases effecting changes which are seemingly simple and innocent upon their face, which in reality materially modify the substance of the measure.

8. Repeti-
tion of
procedure
in second
house

After the debate on third reading is closed, the question is upon the final passage of the bill. This is usually, and in some states always, by constitutional mandate, by taking the yeas and nays, which are entered on the journal as a permanent record of the action of each member.

Having passed one house, the bill with the action of the first house endorsed thereon, is then formally communicated to the other, where the procedure followed is practically a repetition of that in the first house. Where the joint committee system is in vogue, reference to committee is not necessary in the second house except under unusual circumstances.

9. Con-
ference
committee

If amendments to the bill are adopted in the second house, it must be returned to the first house for concurrence in the amendments. If concurrence is refused, the only recourse to save the bill from failure is to send it to a conference committee. The conference committee consists of a small group appointed from the two houses to consider the points on which these bodies have failed to agree, and to work out and suggest a compromise. This may include any changes which the committee may see fit to suggest, even to the inclusion of matter which did not appear in the bill as passed in

either house. This conference stage of the bill is fraught with possibilities. The conference committee is selected by the majority leaders in both houses, who are thus in a position to dictate the compromises offered by the committee. This opportunity has been taken advantage of occasionally to insert provisions for which their sponsors could not hope to secure a favorable vote under any other circumstances. Conference is usually resorted to only at the end of the session, and only bills of considerable interest to the majority or to the public are thus dealt with. When the conference committee reports, its report must be accepted or the bill must fail. Under these circumstances the report is usually adopted and in the closing hours of the session is passed without close scrutiny.

After the bill has been passed in identical form by both houses, it is sent to be enrolled. Enrollment consists of making a new copy of the bill as passed, ordinarily with a somewhat more formal appearance than is true either of the original or the engrossed copy. Appropriate places are provided for the signatures of the presiding officer in each house. The affixing of the signatures of these officers has the effect of a certification that the bill as enrolled has passed the two houses.

10. Enrollment, signature and presentation to the governor

Occasionally an attempt is made by a litigant in some case to secure the setting aside of a statute on the ground that the steps in its passage were irregular. In deciding this question, the rulings of courts have not been uniform. In some states it has been held that the signatures of the presiding officers attached to an act are conclusive evidence that it was duly passed in the form appearing in the enrolled copy. The court thus refuses to take cognizance of the alleged irregularities in the process. In other states the courts will go behind the official signatures and take cognizance of any irregularity if it can be discovered from an examination of the journal of the house or of the bill itself.

Upon its signature by the presiding officers of the two houses or by some other certifying authority, the bill, which has now become an "act," is sent to the governor. When the bill is presented to him the governor may do any one of four things. He may approve it as a whole, disapprove or veto it as a whole, approve it in part, disapproving other parts, or he may leave it untouched.

11. Action by the governor

The governor has granted to him a certain definite number of days varying from three to ten in which to consider a bill. If he approves the bill and signs it within the prescribed number of days it thereupon becomes law. If he does not approve the bill he may

veto it and in that case he must return it with a message stating his objections to the house in which it originated. He may, in the third place, in a number of states, approve a bill in part while at the same time vetoing items. The requirement that he approve or disapprove as a whole a long bill containing a number of items sometimes places the governor in an awkward position. In order to secure some desirable legislation, he finds himself obliged to approve some portion of the bill which he believes highly undesirable. On the other hand, to prevent the enactment of some undesirable section he finds himself obliged to veto an act which he thinks on the whole to be highly desirable. This situation presents itself more often in connection with appropriation bills which contain a large number of detached items on a wide variety of subjects. It is to meet this situation that the governor is, in more than two-thirds of the states, permitted to disapprove particular items while approving the bill in general. The same privilege has been granted him with respect to any bill on whatsoever subject in the states of Virginia, South Carolina and Washington.

In the fourth place, the governor may take no action at all. If at the expiration of the time in which the governor may approve bills, he has not done so, the measure automatically becomes law as if he had approved it. If, however, the legislature has adjourned within this period, some of the above regulations are modified. The governor still has the same number of days for consideration and in some cases is given additional days. The extension of time is designed to allow for the legislative habit of withholding final action on bills until the last day of the session and then passing a great number. The result of this practice is to overwhelm the governor with bills demanding his consideration within a brief time. In one state at least, Indiana, the governor may refuse to receive bills which are presented to him within a certain number of days of the end of the session. This acts as an absolute veto since the bills thus refused cannot be reconsidered by the legislature. Generally if a bill is vetoed after adjournment it is likewise lost; but in a few states such bills are retained by the secretary of state and presented to the legislature at its next session for reconsideration.

Vetoed
bills

When an act has been vetoed by the governor, it is returned by him to the house in which it originated, accompanied by a message in which he states the reasons for declining to approve the measure. When the act is thus returned to the legislature, it may be allowed to remain without further action being taken or it may be called up

for reconsideration. If the forces advocating the bill are earnest in their purpose to secure its passage and believe that it can command a sufficient vote in both houses, it is called up and a vote taken. The vote required to pass an act over the governor's veto is sometimes a bare majority, but in most cases a two-thirds majority in each house is required. If the governor stands well with the legislature and the public, the presumption against the measure raised by the executive veto is so great that no attempt is made to repass the act. But if, on the other hand, there is an overwhelming sentiment in its favor in the legislature and the members feel that no strong public opinion is behind the governor's attitude, the act is likely to be taken up and passed in spite of the veto.

Great variety exists as to the time an act takes effect after it has been signed by the governor or otherwise become law. Three different rules are observed in connection with this matter. In a number of states it is provided that acts shall take effect when published or when promulgated, or both. Publication is accomplished by printing either in an official newspaper or in pamphlet or book form. Whether or not first printed in some temporary form as in a newspaper or pamphlet, they are always ultimately issued in book form. The volume is entitled "Laws" or "Acts" of the particular year, and this volume is usually spoken of as the "Session Laws." Sometimes after the printing of the acts there is made necessary by the constitution a formal proclamation by the governor declaring that the laws are in force. This is called promulgation of the acts.

In other states, the laws take effect either upon a fixed date or at the end of a certain number of days after passage, or after adjournment. Whether acts ordinarily take effect upon publication or upon a fixed day, it is sometimes desirable, if not absolutely necessary, that "emergency measures" shall take effect immediately upon passage. An emergency measure is in some cases defined as one "necessary for the preservation of the public peace, health, or safety." Various safeguards have been set up to prevent abuse of the emergency privilege. In all cases, a statement of the existence of emergency must appear in the act, and sometimes an extraordinary majority, ordinarily two-thirds, is required to effect this purpose. Since the legislature itself is the sole judge of the existence of the emergency, a mere statement in the act that an emergency exists is sufficient to give it immediate effect. In some states the emergency

clause is used so freely that a majority of all the acts at any session are made effective at once.

From time to time all of the acts that have been passed by all past legislatures in a state, and which have not expired by limitations stated in the act itself, or have not been repealed, are brought together and arranged by topic in a single collection sometimes filling several volumes. When this work is done by the state, re-enacted as a whole by the legislature, and given the force of law, the collection is called properly the "revised statutes." In a considerable number of cases, the work is merely a compilation of existing law arranged topically without being re-enacted by the legislature. In such cases it is usually, but not always, a commercial venture undertaken by private parties, and is properly spoken of as "compiled statutes." A "code" is a complete systematic statement of the whole body of both the statutes and common law, authorized by the legislature and enacted by them into law.

Quality
of
legislative
members

It is not an uncommon thing to hear the assertion made that our legislatures constitute the epitome of mediocrity or worse, and that they are lacking in experience, independence, character, and intelligence. That the American voters should year after year in any large proportion of the states continue to select as their representatives persons who justify such sweeping condemnation seems scarcely possible. If these charges are true to anything like the degree suggested, they constitute an indictment of the voters quite as much as of the legislators, and a sad commentary upon popular government. It may be appropriate, then, to inquire into the characteristics of our legislative personnel with special reference to some of the qualities above mentioned.

A criticism frequently uttered, and with reason, is that legislators are inefficient. Efficiency, the capacity to produce desired results promptly and with a minimum waste of energy, is a matter of both personnel and method. In evaluating our legislatures and their work, both factors must be taken into account. Considering efficiency in its personal aspects, the efficiency to be desired in a legislator is quite different from that required of the administrative officer. In the latter case, it is the result of professional training and experience in the technique of his subject. It was this difference between legislative and administrative efficiency which Governor Hodges of Kansas failed to appreciate when he proposed, as mentioned above, the small legislature composed of members who should devote their whole time to the work with a view to attaining pro-

iciency in the art of legislation. The efficiency of the legislator is of quite a different kind. The technique of gathering information upon matters of legislative concern and of expressing legislative purpose in proper statutory form, is not essential to a good legislator. These can be, and in many states are, supplied by legislative bureaus. The efficiency which is demanded of a legislator beyond the cardinal essentials of mental capacity and personal character, consist in a proper social outlook, sound judgment, and breadth of mental horizon. A flexibility of mind is here called for which enables him to accommodate his own views to reasonable compromises in nonessentials while holding fast to the fundamentals of a wise and beneficent public policy. As bearing upon their personal qualifications for performing their legislative task, it is interesting as well as pertinent to inquire into the walks of life from which they are drawn.

Investigation reveals great diversity of occupation among the members of our legislative bodies.

As a rule lawyers are the largest single occupation group, although in the agricultural states the farmers sometimes predominate. In Ohio, in 1919, these two classes each constituted about one-third of the whole lower house. In the Pennsylvania House of Representatives of 1925 there were forty-one lawyers and but thirteen farmers. In Indiana in 1927, the farmers numbered twenty-five, or one-fourth, of the same house, while lawyers and those engaged in commercial and banking pursuits numbered nineteen each. If with these are compared the more exclusively agricultural states of Texas and Iowa, it will be found that in the former in 1921, forty-six were lawyers and only thirty-six farmers, and in the latter, in 1923, sixty-eight farmers and twelve lawyers. The lesser groups represented in the average state include most frequently real-estate dealers, insurance agents, manufacturers, contractors, and publishers. To these are added an occasional member of professions other than the law and of organized labor. Occasionally a legislator admits his membership in the leisure class under the designation "retired." In a middle western state one legislator recently confessed unusual versatility when subscribing himself as "lumberman and undertaker."

Vocations
of
legislators

One of the factors which goes far in determining the efficiency of the individual member of a legislature is his length of service. One of the products of the efforts made to realize political democracy in the earlier years of the nineteenth century was the doctrine of rotation in office. According to this theory, since all men are politically

equal, it follows that every citizen is competent to perform any function of government, and is entitled to be given an opportunity to do so. A result of the application of this doctrine has been what, in the language of the industrial world, would be called a heavy legislative "turnover."

Length of
service of
members

It is true, of course, that a first necessity is that the views of the member on questions of public policy be in substantial accord with those of a majority of his constituents. When this is no longer true, the member should retire and give place to one who is in such accord. But within these limits, permanency of legislative tenure is a matter of importance, not only to the member, but to the constituency which he represents.

It is true that permanence of tenure does not weigh as heavily in state legislatures as in Congress, because legislative organization and procedure in the state body are less complicated, and seniority in rank does not count to the same degree as in Washington. Nevertheless it is conspicuously true that the members who assume positions of leadership and exercise the greatest influence in the legislature are those who have seen service for long terms.

It must be borne in mind that a process as complicated as that of legislation can be mastered only after long experience. To a familiarity with the intricacies of parliamentary procedure and the traditions of the body, the successful member must add a wide acquaintance with his fellow members. If he is personally acceptable and reasonably diligent, he acquires an acquaintance and a standing which win for him desirable committee assignments and influence both in the committee room and upon the floor. It is in this way that opportunity is gained to be of the greatest service to his constituents and to the state. Too often the constituencies fail to realize the advantages of retaining in the legislature representatives who have given satisfactory service. Local political leaders, and especially those who hope ultimately in their turn to inherit legislative seats, carefully refrain from bringing this bit of political wisdom to the attention of the voters.

Investigation in two typical middle-western states shows some interesting facts concerning legislative tenure. In Indiana, from 1913 to 1927, it is found that from twenty-five to fifty per cent of the members of the lower house had seen previous legislative service in that house. In the same state the Senate is a continuous body so that at every session one half of the members have sat in the previous session; but of the senators who were not hold-over mem-

bers, about fifty per cent had seen previous service. In Michigan a study of the membership of the House of Representatives showed that of the three thousand persons who were members of that body between 1835 and 1921, about fifty per cent sat in more than one session, but that only fifteen per cent sat beyond two sessions. Of the whole number, about eight per cent served in the Senate either before or after service in the House. Some departures from these percentages would probably be found in the older as well as in the newer states, but they may be accepted as indicative of the general situation with respect to legislative service.

The charges sometimes uttered, that the members of our legislature display a decided lack of independence of action, are perhaps in general true, in spite of the fact that, except in a few states and notably in New York, the number of roll calls upon which the members align themselves by party is surprisingly small. So far as there is lack of real independence of action, it may to a great extent be attributable to the fact that with respect to most matters upon which he is asked to express a conclusion, the legislator has no previous knowledge upon which to base judgment. In such cases, caution may constitute a badge of merit. But quite aside from this reason, two facts tend to curb any inclination to display independence of judgment which gains for the ordinary rank and file of members approbation from the men who have power to dispense legislative favors. The new member soon learns that the surest way to forward the measures which his constituents are demanding is to display a proper consideration for the suggestions of the leaders. It may be added that the slight honor attaching to the position and the sacrifice of both time and money involved in securing the nomination, as well as the general failure of constituencies to reward conspicuous services by spontaneous reëlection, have deterred men who might prove most valuable to their constituencies and to the state, from seeking or even accepting nomination.

A second factor bearing upon the independence of the individual member grows out of the relation which he bears to his constituency. Two widely divergent views have been held as to the proper relation which should exist between them. One view, and that held by political scientists and the ablest statesmen, is that the apportionment of representatives by districts is primarily for convenience in election and only secondarily to secure representation of local interests. This view is that, once selected, the member becomes one of the group of representatives of the whole state clothed with full

Independ-
ence of
members

Delegate
or repre-
sentative?

liberty to act and vote, as his conscience and his judgment may dictate, for the common good. According to this view, he is bound by no instructions from his district, and if it should happen that the known desires of his constituents were that he vote "yes" upon a question when his matured judgment tells him to vote "no," his duty is to vote "no."

The opposite view, and that commonly held by the mass of voters, is that the member is a delegate whose duty is solely to act as the representative of the interests of the constituency subject to their instructions, and in duty bound to vote as the constituency dictates. This he must do without regard to his own information or convictions to the contrary. If this view is correct, it would appear that the committee deliberations and the debates upon the floor which go farther than to confine themselves to mere details are unnecessary and presumptuous. Members acting upon this theory have been heard to say upon the conclusion of a debate: "I believe that this bill should not pass, but since my constituents desire it, I shall vote for it."

The better view of the true function of a representative in any legislative body has perhaps never been stated more clearly than by Edmund Burke in his address to the electors of Bristol, in 1780. He said: "The Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates. But Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where not local purposes, not local prejudices, ought to guide, but the general good resulting from the general reason of the whole. You choose a member, indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."

That there have been grave and ample reasons for the widespread decline in legislative prestige there can be no doubt; that scandals have arisen again and again involving the integrity of legislators is unfortunately true; and that innumerable acts unwise in conception, faulty in phraseology, and positively mischievous in effect have been passed, can be demonstrated by reference to the printed session laws of almost any state.

Nevertheless, it may safely be asserted, on the whole, that state legislatures constitute typical cross sections of the great middle ranges of American society. Seldom are the lowest or the highest levels of intellect, culture, or substance reached by the occupants

of legislative seats; but it appears that the average of legislative merit with respect to all the essential qualities is above that of the community at large.

When the conditions under which it is produced are considered, one is led to wonder that the legislative product has been as good as it has. It must be borne in mind that the members are ordinary citizens, drawn from all walks of life, usually having had little previous experience in matters of government beyond the boundaries of their own county. These men are brought together among unfamiliar surroundings and confronted with the task of considering a great variety of problems with which they have little or no familiarity. They are asked to work under procedure which is both strange and complicated, often without effective leadership, and to accomplish their task within a space of time so short that even the experienced members can find time to give serious thought to no more than a fraction of the measures presented. Under such conditions, they are asked to enact from three hundred to a thousand statutes, which shall stand the tests of practical application and the technical scrutiny of the courts. That the results of their labors have sometimes failed to stand such tests of wisdom, of practicality or of technical correctness is truly not surprising.

For references see list at the end of Chapter Six.

CHAPTER NINE

FINANCE

THE subject of state finance is one of prime importance, because without funds to meet expenses the process of government must of necessity soon cease. Not only must there be available funds to carry on the services of the state, but the cost of providing them must be made as light a burden upon the taxpayers as is consistent with the securing of adequate support for government. The process of transmuting money into service to the people, too, must be so performed as to secure for expenditures made the greatest possible degree of well-being for the state. To accomplish these results there is demanded both a wise legislature for planning and an efficient staff for administration.

It is sometimes said that after all, government is merely a business enterprise of all the people. It is true that in some respects, especially in the realm of finance, there is an analogy between private and public business. To press this analogy too far, however, is to overlook certain vital points of difference, and it leads to some quite erroneous conclusions. Public finance differs from private finance in certain important particulars.

Public
and pri-
vate finance
distin-
guished

In the first place it must be observed that while in private finance expenditures must, in general, be measured by income, in public finance income must, subject to broad limitations, be governed by expenditures. That is to say, the amount of income obtained by the government, within the limits of what the economic condition of the people can bear, is measured by what the people demand in the way of services.

In the second place the goal of private business is profit, while the goal of public finance is good government. The success or failure of private business in attaining its objective can be very clearly determined since it is shown in terms of dollars and cents on the balance sheet. The success of government can be tested by no such clear and objective tests but is expressed in the general well-being of the community. Well-being is a condition dependent upon a multitude of considerations, material and spiritual, economic and social, tangible and intangible, which themselves have widely differing values for different persons.

Furthermore and in the third place, state government is, in certain other respects, not comparable to private business. The state possesses the power of taxation, it has immunity in turn from taxation, and it is immune from suits at law, both upon its debts and for injuries committed by its officers in the regular course of their duty. Were private business thus favored, its situation would be quite different from that in which it finds itself. But in spite of these differences it is true that government should be conducted in a businesslike manner. By this is meant that the citizen has the right to demand that in the performance of its work, the government shall observe those fundamental principles of efficiency and economy which have been found necessary to the successful prosecution of private enterprise.

The subject of finance may conveniently be studied under four main heads: expenditures, revenues, debt, and financial administration.

A striking fact in state government in recent years, and one which has caused much concern, is the increasing total of state expenditures. Census figures of the whole United States are available for the years since 1915 only. These show that from 1915 to 1924 the total cost of state government in the forty-eight states rose from \$494,907,084 to \$1,513,628,021, an increase of 205%.¹ Though the figures for the whole country are not to be had for earlier years, those for the state of New York are available since 1850. The growth of expenditures there have been found to be as shown in the table on the next page.²

Growth
of public
expendi-
tures

This increase in the costs of state government is attributable to several causes, chief among which are: growth of population, the decline in the purchasing power of the dollar, and the expansion of the services rendered by the state.

If the growth of population is taken into consideration and the increase in governmental costs reduced to a per capita basis, it will be found that the per capita cost for the forty-eight states has risen from \$4.06 in 1915 to \$9.60 in 1924 when reduced to the basis of the dollar of 1913.³ For the longer period the increase in New York state was from \$.65 in 1850 to \$5.88 in 1915.⁴

¹ Department of Commerce, Bureau of the Census, *Financial Statistics of States, 1924*, p. 17.

² *Special Joint Committee on Taxation and Retrenchment, Report, New York, 1926*, p. 57.

³ *Financial Statistics of States, 1924*, p. 19.

⁴ *Report on Taxation and Retrenchment, New York, 1926*, p. 63.

	Actual	Adjusted to the Purchasing Power of the Dollar of 1913
1850.....	\$ 2,011,328	\$ 2,234,810
1860.....	4,772,943	5,435,162
1870.....	14,377,817	11,502,252
1880.....	9,797,404	10,422,770
1890.....	13,117,237	16,396,545
1900.....	22,926,580	28,480,224
1910.....	37,904,475	37,566,379
1915.....	56,986,358	56,534,085
1920.....	93,256,286	58,176,099
1924.....	146,282,549	94,193,528

In comparing costs of government for a period of years with respect to their real burden upon the taxpayer, changes in the purchasing power of the dollar should be taken into consideration. Unfortunately this is not usually done. If such adjustment is made, it will be found that the real increase in total expenditures for the forty-eight states was from \$490,979,250 in 1915 to \$974,641,352 in 1924. The difference produced by such adjustment in the figures for New York is shown by a comparison of the two columns in the New York table above.

Objects
of public
expendi-
tures

A discussion of the third cause of the growth of public expenditures leads to a consideration of the whole subject of the objects for which funds are expended. The fact is that in response to the demands of the citizens the services rendered by the state have been expanding rapidly. When this expansion is analyzed it may be shown to include old services which have recently been expanded, new services undertaken, and services hitherto rendered by the localities but more recently taken over by the state. To these must be added grants-in-aid by the state to localities for services which they are still performing.

Before 1880, state expenditures were chiefly for the maintenance of the state government, for the protection of life and property, and for education. Between the years 1880 and 1900 came a period of great extension of state activity. This was a period marked by great expansion of manufacturing industry and consequent growth of urban population, and by the centralization of business in large organizations with a widening of the gulf between employers and

employees. It is in this period that many new problems, including those of health, sanitation, utility control, and labor and factory regulation, began calling for state action. Furthermore, these social and economic changes complicated the problem presented by the defective and dependent classes, and made desirable the substitution of state for local administration of these subjects.

As a result of these developments two changes are discernible. First, while the expenditures for general government, for the preservation of life and property, and for education increased in amount, at the same time the relative amount spent for these purposes declined. Second, expenditures in certain other fields increased greatly. These fields are public welfare, including the care of the defective and delinquent classes; health and sanitation; and the fields of regulative and promotive action, including public utilities, corporation finance, labor conditions, agriculture, and conservation. Since 1900, the number of activities newly engaged in by the state has not been large. The expansion has been chiefly in highways—an activity taken over from the localities—, in education and in public welfare, matters which had long before 1900 become objects of state expenditures.

The criticism is frequently heard that the increase in expenditures is due to a disposition on the part of the people to create new offices, to seek by regulations to interfere with the personal liberty and property rights of individuals, and to embark on new activities which are branded as "socialistic." That this is a mistaken notion is shown by the following table of the distribution of current expenditures of the forty-eight states according to the object of expenditure.⁵

General Departmental Expenses	1924	1915
Total.....	\$1,001,465,258	\$379,030,094
General government.....	74,582,627	44,508,417
Protection to person and property.....	50,998,100	26,294,091
Development and conservation of natural resources.....	53,188,817	16,558,685
Health and sanitation.....	23,057,132	9,453,673
Highways.....	123,308,148	22,767,766
Charities, hospitals, and corrections.....	165,215,701	89,189,400
Schools.....	368,907,579	145,832,324
Libraries.....	1,888,092	1,331,923
Recreation.....	2,516,843	878,646
Miscellaneous.....	137,802,219	22,214,569

⁵ *Financial Statistics of States*, 1924, p. 31.

Character
of public
expendi-
tures

It will be observed that in 1924 the largest single items of expenditure were education, charities and corrections, and highways. These together absorbed 65% of the whole amount, whereas general government and the protection of life and property consumed but 12% of the total. The largest single increase since 1915 has been in the expenditures for the extensive highway-building programs launched by the states.

If state expenditures throughout the United States are scrutinized from the point of view of the character of the expenditure, one discovers that the distribution has been as follows: ⁶

	Expenses	Per Cent	Outlays	Per Cent	Interest	Per Cent
1915.....	\$ 381,168,330	77	\$ 95,192,799	19.2	\$18,545,955	3.7
1924.....	1,012,504,398	66.9	445,275,636	29.4	55,847,987	3.7

"Expenses" as here used means the current costs of operating the government and performing its services, while the term "outlays" is employed to include the amount expended for land, buildings, structures and improvements of a somewhat permanent character.

Furthermore, while total expenditures have increased 205%, expenses have increased 165.6%, outlays 367.8% and interest 201.1% over what they were in 1915. Variations which occur may indicate the fact that a policy of pay-as-you-go, *i.e.*, paying for improvements out of current revenues instead of from the proceeds of borrowing, has been adopted. From the figures above shown it would appear that though the current operating expenses of the states have been increasing, expenditures for outlays have mounted twice as rapidly. This may be explained in part by the building programs which were postponed on account of war, but in considerable degree by the recent widespread activity in the building of state highways.

A study of statistics so far available over a considerable period shows that the rate of increase in expenditures has been fairly uniform in normal times; but that in years of war and in periods immediately following war, the rate of increase has been distinctly greater. In the light of such experience in the past it seems likely that as we emerge from the period immediately following the World War, state expenditures will tend to drop back to their normal rate of

⁶ *Financial Statistics of States, 1924, p. 17.*

increase. It seems unlikely, however, that any marked slackening in that rate of increase can be hoped for even after normal times have been restored.

In former days, when one might almost say that the normal state of society was one of war, the costs of the state were met in considerable part by the proceeds of war in the form of plunder. Other revenues took the form of tribute levied on conquered and subject peoples, or of ransoms extorted for prisoners taken. In the older autocracies the purposes of the state were the personal ends sought by the ruler, and the resources of the state were indistinguishable from those of the prince. As a feudal lord the ruler received payments in services or in kind which may be considered as a part of the revenues of the state. With the growth of industry and trade, the people of the towns secured commutation of the various payments and services required of them into the form of money payments; and now, with the lapse of time and the development of civilization, money payments in the form of taxes have become the chief support of government.

Develop-
ment of
revenues

With the advance of popular control in government there came a separation of the property and purse of the state from those of the monarch. Certain estates were recognized as being the private possessions of the ruler, while other properties were sold or retained as property of the state. In place of the properties thus taken over by the state, a fixed sum of money sometimes called the civil list was set aside for the use of the sovereign. In the United States, in spite of the existence until quite recent times of vast areas of public lands owned by the federal government and by some of the states, taxation has always been the chief source of governmental income.

Not all the receipts of the state, from whatever source derived, during any given period are, properly speaking, revenues of that period. In the accounts and reports of most financial officers of the states this distinction between "receipts" and "revenues" is not maintained. As a result, much misunderstanding has arisen and sometimes political deception as to the true state of the finances has been practiced.

Receipts
and
revenues
dis-
tinguished

Let us suppose that the state were to start the year with no funds in the treasury, with all bills for the preceding year paid, and no taxes or payments which were due it for the preceding year remaining unpaid. Let us suppose, further, that all payments of whatever sort due during the current year were paid before the end of the

year, and that no money due in years following was to be paid during the current year. Then *receipts* and *revenues* for the year would coincide.

In practice, however, this is never the case. Payments which have accrued, *i.e.*, fallen due, in past years, are constantly being paid during the current year. Delinquent taxes are a common example of such payments which, though receipts, are not properly revenues of the current year. Likewise, taxes and other payments falling due during the current year are constantly remaining unpaid at the close of the year. These sums due are revenues of the current year though they are not receipts.

Receipts, then, for a given period, may be said to be money received by the state during that period without regard to the time due. Revenues may be defined as sums due and payable during the given period, without regard to the time of actual payment.

Certain moneys taken by the state for the use of various subdivisions of the state and paid over to them, although they are among the receipts, are not properly revenues since they do not increase the assets of the state. Money received from the sale of bonds and other securities is not technically included in the revenues of the state because, while it increases the assets, it also increases correspondingly the liabilities of the state. But since, at the present time, funds for so many important undertakings of a permanent nature by the state are secured by borrowing, a more faithful picture of the financial operations of the state is presented by treating these borrowings as revenues.

On the other hand, certain forms of revenues are not usually included among the receipts and are lost sight of. This happens either because they are not in the form of money or because they do not pass through the hands of the state financial officers. Products of state institutions when consumed by the state are not usually included in state revenues. Fees collected and retained by the department for its support are revenues though they seldom find their way into statements of receipts. When the accounts are kept to show merely the amounts of money received and paid out during a given fiscal period, and when financial reports are made in the same way, they are said to be on a *cash* basis. When they are made to show only the money due and chargeable during the period, without regard to the actual time of payment, they are said to be on an *accrual* basis. Unfortunately the accounts of most states are kept upon a cash basis only. This makes it impossible to form a true picture of the financial operations of the state and makes im-

possible intelligent comparisons from year to year. Moreover, it opens the way to the juggling of reports for political effect.

When reports are made on this cash basis it is easy to call attention to the balance on hand at the beginning of a period or administration and to compare it with the balance on hand at the close. From such comparisons unwarranted conclusions as to the financial success of the administration may be suggested. By including collections of delinquent payments or the proceeds of bond issues for permanent improvements, and by postponing the payment of obligations due, a desirable, favorable balance may be shown at the close of the period or administration. This may conceal bad financing, and creates an entirely false impression among the taxpayers. When accounts are kept and reports made strictly upon an accrual basis, the opportunity for such political manipulation and popular misunderstanding is greatly reduced.

As has already been pointed out, the income of any government is determined in the main by its outgo. Hence the total income from revenues and borrowings must in the long run correspond rather closely to the total expenditures. The federal census bureau has computed the total revenue of the forty-eight states for 1924 as \$1,370,066,018, and the debt obligations for that year incurred by borrowing as \$143,562,003, a total income of \$1,513,628,021. A comparison of this income with that of former years shows the following: ⁷

Revenue receipts for 1915.....	\$ 458,233,000
“ “ “ 1919.....	675,217,000
“ “ “ 1924.....	1,370,066,000

Present-day state revenues

This constitutes an apparent increase in nine years of 198%. Here again, as in determining differences in expenditures, to determine the true increase in state income, it is necessary to take into account the cheapening of the dollar through its decreased purchasing power since 1915.

Sources of revenue

The income of the state, whatever its total amount may be, is derived from a considerable number of sources which may be grouped into the five following classes:

1. Commercial revenues
2. Administrative revenues
3. Taxes
4. Loans
5. Transfers

Under the head of commercial revenues are included those which

⁷ *Financial Statistics of States, 1924, p. 17.*

Commer-
cial
revenues

arise from operations in which the state stands in the position of a proprietor. Here the state is in much the same position as a private individual or corporation rather than in that of a government, and these revenues are sometimes spoken of as proprietary revenues. Among the most important are those derived from the public domain and from public industries.

The
public
domain

Practically every state has owned at some time or still owns land or natural resources which are not used in carrying out the ordinary functions of government. Neither does it employ these in conducting any commercial undertaking operated by the state. Such lands and resources are spoken of as the public domain. The federal government also owns an extensive public domain. The two should not be confused. In the public domain of the states would be included agricultural lands, both undeveloped land destined to be disposed of to settlers, and developed lands leased to private individuals; forests; mines; water supplies, and shore rights. This domain of the states is to-day made up, for the most part, of remnants of land granted by the federal government in aid of education, and of swamp lands granted to the states for development and sale. The total grants to the states have aggregated approximately 200,000,000 acres.

In this country the policy of the federal government has been to distribute vacant agricultural land widely at a low price to *bona fide* settlers so as to gain a social rather than a fiscal advantage therefrom. Within the present generation there has appeared a disposition to conserve forest and mineral land with a view to receiving from them a continuing public benefit. The states have, for the most part, failed to derive either any great social or financial advantage, or to develop any definite policy as to their public domain. While they were still almost a drug on the market, land and resources were hastily disposed of at low prices. Too often the funds derived from such sales were so unwisely administered that the public received a minimum of benefit from this generous patrimony. It is only recently that a more intelligent policy, such as is exemplified in the land settlement policy of California, has been adopted by a few states.

A few exceptions to the prevailing unwisdom are conspicuous. Minnesota has derived more than \$45,000,000 from land, timber and ore sales, of which \$35,000,000 has been set aside as a permanent educational fund. Washington has realized about \$20,000,000 from its domain, and Texas has built up a school fund of \$27,000,000

derived from the sale of land. Quite recently a few states have inaugurated a policy of developing state forest reserves and parks which, though not primarily fiscal in purpose, may yield a certain amount of revenue.

The cities of the United States have engaged extensively in the ownership and operation of public industries, such as waterworks, electric plants and, in a very few cases, street railways. The federal government has from the beginning conducted the post office, in more recent years has undertaken irrigation projects on an extensive scale, and has built and operated a railroad in Alaska. As a result of war-time activities there was created at Muscle Shoals on the Tennessee River a gigantic power plant. The federal government, too, at the close of the war found itself interested as an investor in the Emergency Fleet Corporation, the War Finance Corporation, Federal Land Banks and railroads. It seems unlikely, however, that these enterprises which are a legacy of the war will become a settled factor in the fiscal operations of the government.

Public
industries

The states, just before the middle of the nineteenth century, undertook extensive schemes of canal building and some engaged in banking. The financial results of these undertakings were generally so calamitous that several states have specifically provided constitutional limitations on the power of the state government to embark on public industrial enterprises, or to lend the credit of the state to such enterprises under private management.

More recently there has been renewed interest in state industrial undertakings. North Dakota, in 1919, entered the banking business and also became interested in grain elevators and mills, in home-building associations, and in an electric railway. California has developed a system of wharves at San Francisco. Of the \$12,000,000 received in 1924 by the states from public industries, 86% was collected by these two states. Maine, Massachusetts, Rhode Island, and Connecticut received certain revenues from ports and docks; New Jersey, Ohio, Illinois and Louisiana, from canals; North Carolina, from tobacco warehouses; Kansas, from school-book publication, and Oregon, from an irrigation system and a lime plant.⁸ Sales of prison-made goods by the several states in 1923 amounted to more than \$10,000,000.

Thus far we have been concerned with revenues which are derived from commercial rather than governmental activities of the state. Next may be considered a group which, though not taxes, are the

Adminis-
trative
revenues

⁸ *Financial Statistics of States, 1924, p. 27.*

outcome of governmental activities. These include fines, fees and special assessments, and may be grouped under the general name of administrative revenues. The name administrative revenues is applied because while differing widely from one another in some ways they have the common characteristic of being incidental to the routine process of governmental administration.

Fines

A fine is a charge levied upon an individual as a punishment for the violation of the criminal law. The measure of the fine is in a general way the seriousness of the offense, taking into account the attendant circumstances, but without regard to ability to pay. Fines are not imposed for the sake of the money collected, and the revenue derived from them is negligible. Indeed, it is socially desirable that no occasion for assessing fines should arise and that hence the revenue should disappear. The end sought is the security of persons and property, the protection of public morals, and the comfort and well-being of the community.

Fees

A fee is a charge made for a special service rendered or a privilege granted to the individual by the government. Here, as in the case of fines, no account is taken of ability to pay. There may be distinguished two varieties: service fees and license fees.

Service fees are, as the name suggests, charges made for service rendered to the individual against whom the charge is made. Familiar examples of such fees are those paid for recording deeds and other legal papers, the taking of acknowledgments of signatures by a notary, the making of certified copies of official records, the service of legal papers, and for inspections made under various safety and health laws. The amount of the service fee was originally supposed to be based on the cost of service rendered, but in the course of time the amount of the fees became fixed without regard to cost, so that at the present time no connection can be traced between the fee and cost of service.

In earlier days it was a common custom to allow the official collecting fees of this class to retain the sums collected as his compensation in place of a salary. Even in rural communities where the total amount collected was small, the fee system tended to demoralize the public service, since it often caused official activity to be measured by the size of the fee. As population and business increased, the incomes of some officials, notably sheriffs, under the fee system became so great that they exceeded the salaries paid to even the highest officers of the state. These excessive incomes, from fees made certain offices the objective of political manipulators,

and officers receiving them were levied on heavily to secure funds for the party treasury. Of recent years the tendency has been to put offices upon a salary basis. But the fee system still obtains as to certain offices in quite a large number of the states. In some states where fee-collecting officials have been placed upon a salary basis, the office has been allowed to retain the fees for its support, turning into the treasury only such amounts as are in excess of departmental needs. It is needless to say that such a practice has placed a premium upon extravagance and the state treasury has seldom profited greatly from this practice. It is now the prevailing rule to have all fees collected paid directly to the public treasury.

The license fee, instead of being a payment for a service, is levied for a privilege or permission granted to the party paying the fee. Persons wishing to engage in certain lines of business or in certain practices are required to secure a license; and for one to engage in such business or practice without a license is made illegal and punishable. The original purpose of the license was regulation. It was recognized that certain kinds of business, such as liquor saloons, pool rooms, theaters, dance halls, hotels and restaurants required supervision and regulation. The same was true of the practice of certain professions such as medicine, dentistry and pharmacy. More recently the use of motor vehicles on the highways has called for the same treatment. To-day a wide range of activities are regulated through the issue of licenses for which a fee is paid. The government sets certain standards of conduct, service or quality which must be maintained by the licensee, and failure to do so results in suspension or revocation of the license and sometimes some further penalty as well.

Originally the amount of the fee seems to have been based on the cost of supervision, but since the granting of the license confers on the recipient in some cases special opportunity for financial gain, the tendency has been to make certain kinds of licenses a source of revenue to the state. Consequently, scales of license fees have been elaborated for revenue purposes, based on the principle of payment for benefits conferred. The automobile license fee is an instance where to the original purpose of regulation has been added that of compelling the automobilist to make special contribution to the construction and maintenance of the highways. The revenues derived from license fees in 1923 by all the states amounted to over \$147,400,000, of which sum \$139,900,000 was derived from auto-

mobile licenses. The greater portion of the balance came from hunting and fishing licenses.⁹

Special
assess-
ments

The third form of administrative revenues, the special assessment, is a proportional contribution levied upon land to defray the cost of a public improvement which is assumed to confer a special benefit upon the property assessed.

The improvement must confer a public benefit, but it must at the same time confer a private benefit to the property assessed, equal at least to the amount of the assessment. This method of securing funds has become a favorite one for financing municipal improvements such as street, boulevard, and park improvements, street widening, sewer construction and water-front improvements, but it has not thus far been used extensively for state purposes. The total revenues of the forty-eight states derived from special assessments in 1923 was but \$15,500,000. The states showing the largest returns from special assessments are Louisiana, Michigan, Kentucky and Oklahoma. In some instances these revenues are derived from payments by minor divisions on whose behalf the state has undertaken public improvements.¹⁰

The method of special assessment for securing funds for public improvements has become popular because, since it is based upon benefits conferred, its fairness is apparent. Moreover, by this method, restrictions imposed on taxation through constitutional debt limitations are avoided, and, further, land exempted by law from the payment of property taxes is thus made to bear its share of the burden of taxation. For these reasons and on account of the facility which it affords for financing needed improvements, it seems likely that special assessment will be made use of with increasing frequency.

Nature
and
definition
of a tax

Modern governments without exception find their principal source of revenue in taxation. All other sources are but supplementary to this.

In the course of the long development which has produced our modern systems of taxation, a first step away from the arbitrary levies made under various names and guises by autocracy, and in the direction of popular government was the general acceptance of the principle that no tax should be levied except by the representatives of those who were to pay it. With this principle established, the next problem was that of determining how the burden of the cost of government should be distributed in the community.

⁹ *Financial Statistics of States*, 1924, p. 25.

¹⁰ *Ibid.*, p. 74.

It has been held by some that taxes are a payment for benefits received by the taxpayer from government and that hence they should be distributed on that basis. It has been found impracticable to arrive at any just estimate of the relative benefits conferred upon individuals and this has led to the general abandonment of the benefit theory. The underlying theory upon which tax systems are constructed to-day is that government renders an indispensable service to the community, and that since it is impossible to determine the benefits conferred upon individuals, the most equitable solution is that each should pay in proportion to ability without regard to benefits. The various forms of taxation in force to-day are the result of efforts to find a fair measure of ability.

In accordance with the above theory a tax has been defined as a compulsory contribution from the individual to the government to defray the expenses incurred in the interest of all, without reference to benefits.

It will be observed that a tax differs from a fee in that the fee is not compulsory, and from the assessment in that the assessment is imposed to pay for special benefits conferred.

The expansion of state expenditures and the relative inelasticity of the other state revenues have resulted in an almost constantly increasing total of taxes collected from the people. A recent investigation in the state of New York reveals the following facts concerning the increase in the total tax burden, which would probably be typical of conditions in other states in the last seventy-five years.¹¹

Trend of
state
taxes

Year	Total Taxes	State Taxes
1850.....	\$ 12,000,000	\$ 365,000
1875.....	95,000,000	14,000,000
1900.....	185,000,000	22,000,000
1915.....	397,000,000	44,000,000
1924.....	1,283,000,000	132,000,000

This amounts to an average increase in all taxes for the whole period of 5.6% per year, or for state taxes alone, 5.7% per year. Taxes always increase heavily during and immediately following war. This was found to be true after the Civil War and again in the case of the World War. From 1910 to 1924 state taxes in New

¹¹ *Report on Taxation and Retrenchment, New York, 1926, p. 97.*

York were found to have increased at the rate of 11.7% per year. The rate of federal tax increase was, of course, greater.

The real burden of taxation, however, does not depend upon its nominal amount alone, but also upon other factors which must be taken into consideration. One of these factors is the varying purchasing power of the dollar which is taken from the citizen in taxes. When this is taken into account it is found that the increase for the period was not 11.7% per year, but 6.9%.¹²

A second modifying factor is the relation which the amount taken in taxes bears to the income of the taxpayer. While taxes were increasing, as has been shown, from 1850 to 1924 at the rate of 5.6% per year, it has been found that the real added burden on the taxpayer has been reduced by the fact that there has been an increase in private income during the same period at the rate of 4.8% per year. Thus it appears that for the whole period since 1850 taxes have in reality been increasing at a rate about one-sixth faster than incomes, a rate which if continued over a long period of time would ultimately lead to grave consequences. However, the fact that taxes have since 1910 really increased twice as rapidly as income, and apparently even more, has recently given rise to great concern.

Essentials
of a tax
system

Whatever the basis of taxation, certain essential characteristics have come to be generally agreed upon with respect to the system.

The tax must, first of all, be *adequate* to provide, along with other sources of income, sufficient funds for the support of government. It must be *equitable* in its distribution of the burden through the community. It must be *economical* in that it takes from the taxpayer no more than is required for the needs of government economically administered, and that at a low cost of collection. It must be *elastic* so that it may be capable of expansion and contraction to meet the varying needs of the treasury. It must be *flexible* so that if changed conditions make changes desirable in the system they can readily be made. Finally, it must be *simple* both in structure and in administration so that it may be easily understood and grievances readily adjusted.

Under the complicated economic conditions of recent times no one form can satisfy all the essentials of equitable taxation. Consequently a number of different taxes are imposed forming together a system and designed to supplement one another. The tax systems in operation in the several states to-day include some or all of the

¹² *Report on Taxation and Retrenchment, New York, 1926, p. 101.*

following forms: general property tax, income tax, corporation taxes, business tax, inheritance tax and gasoline tax.

The oldest form of taxation in this country and the one in most universal use is the general property tax. This is one upon all forms of property, real and personal, tangible and intangible, levied according to the value of the property at a uniform rate. Originating as a local tax, its use was gradually extended until it became the cornerstone of the state tax structure. So thoroughly has the principle of this tax been accepted that the constitutions of half of the states make its use imperative. There has been a tendency in recent years to amend these constitutional provisions so as to free state legislatures from this imperative obligation to use the general property tax. In the year 1924, approximately one-fourth of the total revenues of all the states for state purposes, and an even greater proportion of revenues of local governments was derived from this form of taxation. One state alone, Pennsylvania, in that year derived no revenue from the general property tax for state purposes.

The
general
property
tax

The first step in the administration of the general property tax is the making of the assessment. The assessors are usually locally elected officers, although in certain cities they are appointed. Their duty is to list all the property of every person at its true cash value, or at some predetermined proportion of its cash value, which value is determined by the observations of the assessor supplemented in some states by the sworn statement of the owner. It is not unusual, however, to have certain special forms of property such as railroad and public utility property assessed by some state board like the tax commission. The tax lists thus prepared are made the basis of all property taxes, both state and local.

Assess-
ment

In listing property for taxation, the general rule is that real estate and tangible personalty are to be taxed wherever found, without regard to the residence of the owner, but that intangible property wherever located shall be taxed at the legal residence of the owner.

After the assessment lists are thus prepared, they are placed in the hands of a board variously known as the board of review, board of relief or board of equalization, sitting for the county, or, in New England, for the town. The functions of this board are, in the first place, to correct errors or omissions in the local assessment. The taxpayer may himself appear, present his grievance, and if it be found that he has been assessed too much, secure relief. In the second place, it is the function of this board to equalize assess-

ments among the assessment districts as a basis for an equitable distribution of county and state taxes.

When the county valuation has thus been corrected, the lists are certified to some state authority, usually a tax commission. Here equalization of assessment between counties is made, involving in some cases a reassessment in certain districts or occasionally a reassessment of particular pieces of property. Thus the state valuation is finally established.

Defects in
the
general
property
tax

In the pioneer stage of society such as existed in this country when the general property tax was established, this form of taxation was reasonably just and practicable of enforcement, but with the change to a complex industrial civilization the time long since arrived when it became neither just nor practicable. Defects which have gradually made their appearance and which to-day render it totally unsuitable as a basis of taxation exist both in principle and in administration.

In principle this tax is defective in at least three respects. First: It assumes that the value of property owned is an accurate measure of a person's ability to pay taxes. Under the present organization of economic life various forms of property having equal value produce widely varying income, and hence represent varying ability to pay taxes.

Second: Taxation based upon property fails to reach those whose income is derived from salaries. The man who saves a portion of his salary and invests it in a home pays a tax on the home. The man who receives, perhaps, a larger salary but who saves nothing has no property when the assessor appears, and escapes taxation. This form of taxation thus imposes a penalty upon thrift and an added burden on the farmer and the home owner.

Third: The property tax results in double taxation. Corporate stock usually represents merely the right to share in the income or proceeds from certain corporate property. Under the general property tax, corporations must pay taxes on property owned by them and, at the same time, the shares of stock of these corporations are taxed as property of the stockholder. Thus the income from the same property is taxed twice.

Furthermore, the general property tax is defective in its administration. When the tax was first put in effect, property consisted mostly of land and improvements, and of tangible personal property such as stock, tools, crops, and a little household furniture. All these were visible and could not easily be concealed. The assessor,

a neighbor possessed of similar property, could easily arrive at a just estimate of their value. Intangibles scarcely existed and little property could escape taxation. Changed conditions have been fatal to the effective administration of this tax in two respects. First: The system of assessment has become entirely inadequate. The assessor is ordinarily a person elected by the voters of the locality, having no training or especial qualifications for his task and receiving a compensation too small to attract competent persons. He is wholly unfamiliar with the value of much of the great variety of tangibles which he is called upon to assess, and as a result, he must fix an arbitrary valuation or accept the misleading suggestions of the owner. The result is that great inequalities in assessment occur, and it is the more valuable kinds of property usually held by the more well-to-do classes which most completely escape their just share of taxation.

Second: This tax results, too, in still greater inequality through other forms of evasion. Whereas, in former days, property was chiefly in tangible form, there have come into existence large amounts of intangible property in the form of stocks, bonds, notes and mortgages which far exceed in total amount the value of tangible property and are easily concealed. The general fact that much of this intangible property is concealed and thus escapes taxation is indicated by what has been found to be true in New York and Ohio, where it is a matter of common knowledge that intangible wealth abounds.

In New York state, from 1866 to 1914, the proportion which personal property assessed for taxation bore to total assessment declined from 25% to 4%. In Ohio, in spite of the greatly increased wealth of the state, the total amount of intangibles listed for taxation in 1892 was greater than in any succeeding year in the following quarter of a century.

When concealment is not resorted to, evasion of taxation often takes the form of investment in tax-exempt securities. Others evade by establishing a legal residence in jurisdictions where the rate of taxation is very low.

The net result with respect to the general property tax is that it has become, as some one has said, "neither uniform, nor general nor equitable." Widespread conviction as to the failure of this tax has led to efforts along at least three lines to remedy the situation. These are, first, the introduction of reforms in the administration of the existing tax; second, the classification of property for

purposes of taxation, and third, the introduction of special taxes. The steps taken in each of these directions may next be examined.

Adminis-
trative
reforms

In some localities, especially in cities, it has begun to be recognized that the work of assessment is of a technical character demanding both knowledge and experience. Consequently, in those places the office has been made a full-time one, and assessors are selected by appointment, given a long term and paid an adequate salary. Assessors thus secured have prepared land value maps, and keep a check on sales of property as an index of values and to furnish the basis of more just assessments.

In many states the local assessors are held to a more thorough performance of their work through the supervision of a county assessor and by a state tax commission. These authorities, one or both of them, are given power, as has before been noted, to correct inequalities and supply omissions even to the extent of requiring reassessment in exceptional cases. Although these measures have succeeded in alleviating some of the lesser evils of this form of taxation, other measures have been found necessary to reach the more fundamental defects.

Classifica-
tion of
property

Observers have discovered that one cause of the failure of the general property tax arises from a failure to recognize that property is of widely differing sorts, and that principles and methods of taxation applicable to some classes are quite unsuited and even unjust when applied to others. For example, it is well known that tax rates are generally fixed with respect to their application to real estate and tangible personalty which are usually undervalued. When such rates are applied to bonds, stocks and notes whose value is fixed and cannot well be undervalued, the effect is to take from the owners a half or even two-thirds of the income from such property.

A remedy adopted in a number of states, among them Kentucky, Maryland, Minnesota, Rhode Island and Virginia, is to retain the principle of the property tax, but to recognize by law different classes of property. To each class of property is applied a different rate with a view to securing an equitable distribution between classes and between individuals in the same class, and at the same time to derive as great a net total of revenue as possible.

The simplest form of this procedure is to recognize intangibles as a separate class and tax them at a low rate as compared with that imposed upon tangibles. The theory is that since intangibles are so easily concealed, they will be hidden by the owners rather than pay the heavier tax, but that with a more moderate rate the owner will declare his property for assessment. Experience has proved

that this assumption is correct, and that the smaller rates upon intangibles result in greater returns in the form of taxes. In some states the idea of classification has been carried to a greater extent by recognizing from four to seven classes, with a different percentage of the true value fixed as the base of taxation in each class.

A third remedy for the inequities of the general property tax lies in the development and application of a series of taxes which may be used either to supplement the general property tax or to supersede it altogether. Among the newer and supplementary forms of taxation thus introduced are the income tax, the corporation tax, the business tax, various special consumption taxes, and the inheritance tax.

Special
taxes

Among the special forms of taxation which have grown in favor in recent years is the income tax, which has been adopted upon the assumption that income is the best index of ability to pay. This tax, which has become familiar through its use by the federal government, was for many years experimented with by certain states, notably Massachusetts; but, on account of weakness in administration, it was not a success. Since 1911, however, when it was first introduced in Wisconsin and administered with success, this tax has become a part of the revenue system in not less than thirteen states.

The
income
tax

This tax consists of a levy placed usually upon the total income of the individual from whatever source derived, though in some laws restricted to particular classes of income. The original example of the income tax in this country, that of Massachusetts which has been on the statute books since colonial days, was a levy upon professional incomes only. When laid upon all incomes, the levy is by no means always uniform. Under the present law in Massachusetts different rates are applied to incomes derived from salaries, from gains from intangibles, and from interest and dividends. It is a fact which is evident to all upon reflection that as incomes become larger, ability to pay increases faster than the income. So, to equalize the burden, the rate is usually made progressive, *i.e.*, larger as the income becomes larger, care being taken not to make the contributions from large incomes so great as to encourage attempts at evasion. The rate imposed by state laws rarely rises above six per cent for the largest incomes. Small incomes up to a certain limit are usually exempted from the tax, and the exemption varies with the size of the family dependent upon the income. Various methods of assessment have been tried but that has been found most efficient which requires the taxpayer to declare his income and

the source from which it is derived. The tendency to file untrue statements is checked by information secured from employers, corporations, and other sources of income. This form of tax requires an efficient taxing machinery, but where such apparatus is supplied the evasions are believed to be less than under most forms of taxation.

Business
taxes: on
corpora-
tions

The more elaborate tax systems include a considerable variety of taxes upon business, among which the most important are corporation taxes. These include levies upon the physical property, the capital stock, and the franchises of the corporation, all of which are usually administered by the state tax authorities rather than by the local taxing machinery. Two chief motives seem to have actuated the state in imposing special taxes on corporations:

1. Many corporations hold both highly specialized tangible property and also complex forms of intangibles. Both forms of property give rise to problems of valuation beyond the ability of the ordinary local assessor.

2. There has frequently existed a definite conviction that by various means and devices corporations manage to escape their just share of taxation.

The need for special forms of taxation has seemed to exist especially in the case of public utility and financial corporations, but not to the same extent with respect to mercantile and manufacturing corporations. The corporation taxes, though varying widely in detail, are essentially taxes either on the value of the property, or upon the earning power of the corporation. Sometimes they are laid in addition to the ordinary property taxes and in other cases they are substituted for the older form of taxation.

In either case, it is comparatively easy to assess the value of the tangible property of the utility or financial corporation, including the land, tracks, and buildings of the railroad, and even its rolling stock; the generating stations, pipes and lines of gas and electric companies; the lines and exchanges of the telephone company, and the mains, reservoirs and pumping stations of the water company. Utility corporations, both by the nature of their business and the special privileges granted to them by law, become monopolistic and enjoy special advantages in earning power. Their valuable franchise rights are property, and it is the valuation of these as well as of their intangibles which present puzzling problems of assessment which have never yet been settled with any considerable measure of satisfaction.

In some cases the franchise is assessed as property at a valua-

tion somewhat arbitrarily determined, but more commonly there is substituted a tax upon earning power. Taxation on earning power, which most often takes the form of a tax on gross earnings, presents difficulties with respect to both the fixing of the rate and to valuation.

Besides the special taxes upon corporations, a considerable variety of other taxes has been levied upon business irrespective of whether it is conducted under corporate form. In Pennsylvania, Delaware and quite generally throughout the southern states, there have developed whole series of taxes levied upon different professions and occupations. Particularly in the southern states are these "business" taxes an important source of revenue. In West Virginia a sales tax is levied upon coal and other natural resources produced, upon the sales of merchants, and upon manufactures. Pennsylvania levies a tonnage tax upon anthracite coal produced, and Minnesota a tax upon the value of all ores mined. In Louisiana and Arkansas a special "severance" tax is laid upon the value of natural resources, including oil, gas, lumber, sulphur and phosphate, derived or "severed" from the soil.

Business
taxes:
miscel-
laneous

In 1885 New York introduced an inheritance tax law which imposed a levy upon the transfer of property of deceased persons to the heirs or the beneficiaries under the will. So fruitful was this tax and so simple its administration that it soon found wide favor, and at the present time all but two states, Alabama and Florida, have made use of it in some form. Not only have the rates been gradually increased, but the tax which at first applied only to collateral inheritances has been extended to apply to direct inheritances as well. It is a fact, however, that the rates upon direct are less than those applying to collateral inheritances of like amount. There was early introduced the feature of making the rate progressive when applied to larger inheritances, and in proportion to the remoteness of the relationship of the beneficiary.

Inherit-
ance
taxes

Since the power to tax is such a high exercise of sovereign authority, it is customary in free governments to hedge about its exercise with careful restrictions with respect to purpose, amount and methods of administration, in order to protect the citizen from arbitrary and unnecessary demands upon his resources. Under our system of government such restrictions take the form of limitations embodied in both the federal and state constitutions.

Constitu-
tional
limita-
tions on
taxation:

One of the serious defects of the Articles of Confederation was the impediment to commerce growing out of the power of the states to set up custom houses, and to impose restrictions on trade between the states and with foreign countries whenever such regulations did

not conflict with treaty obligations. To obviate state interference with commerce, three provisions were inserted in the federal Constitution.

1. In the federal Constitution

In the first place, it is stipulated that no state shall, without the consent of Congress, levy any duty on imports or exports, except such charges as may be necessary to carry out the state's inspection laws for police purposes. To discourage attempts by the states to increase their revenues under the guise of fees for inspections, it was further specified that the proceeds from such payments beyond actual costs must be turned into the federal treasury.

In the second place, no state is permitted to levy any tonnage duty upon vessels entering its ports.

The grant to the federal government of the exclusive control over interstate commerce acts as a third restraint on the taxing power of the states. Any tax placed upon goods coming into the state would necessarily act as a restraint upon interstate commerce, and hence violate the constitutional provision in question. This has led to the interesting and delicate questions of what constitutes interstate commerce, and the point at which goods brought into the state cease to be in interstate commerce to the extent that they may be taxed as property within the state. These questions were discussed in Chapter II and will not be examined in detail at this point.

A fourth restriction on the right of the state to tax is one which has been worked out by the courts, and is the rule that neither the property nor agencies of the United States are subject to state taxation. Thus, lands and buildings of the federal government, and personalty such as equipment and materials located within a state are exempt from taxation. Likewise no agency or means of carrying on the work of the federal government may be taxed. The salary of a federal officer cannot be taxed by the state, though the federal income tax applies to such salary. The business of a national bank cannot be taxed nor can bonds of the United States; but real estate of the institution not necessary for the use of the bank can be taxed, as can also national bank notes in the hands of private parties. The rule is that where the tax might act as a restraint on the successful use of the agency for federal purposes it is exempt from taxation, but that beyond such point it is taxable like other property.

There are likewise sometimes limitations on the taxing power of the legislature set up in state constitutions. Perhaps the most common is that which requires that the rate of assessment and

taxation shall be uniform and equal. This practically restricts the state to the use of the general property tax, and prohibits the more modern substitutes, such as the income tax, classification of property for taxation, and progressive rates.

2. In state constitutions

Furthermore, it is necessary that neither the state nor federal bill of rights be violated; that taxes be for a public purpose; that the property or the owner shall be within the taxing area; that there must have been notice of the tax, and that there must be uniformity of taxation under similar conditions and circumstances.

The expenditures for the legislative and judicial departments have never been large. Hence, so long as the executive branch was chiefly concerned with the protection of life and property, it was quite possible to meet the resulting demands upon the treasury from the proceeds of taxation and other ordinary sources of public income. War from time to time imposed an extraordinary financial burden upon the state. Within recent times the public has been demanding more and more frequently that the state perform a wider range of services which call for other extraordinary expenditures such as for lands, buildings and public improvements in great variety. To attempt to meet such extraordinary charges from the proceeds of current taxation has been found impracticable and public borrowing has been resorted to.

Occasions for public borrowing

There are those who contend that public borrowing, except under the stress of war, is unjustifiable. These persons call attention to the fact that borrowing discharges no debt; that it is unfair to shift burdens onto the future which will have its own extraordinary demands to meet, and that it is more expensive than the pay-as-you-go policy. In reply it is said that a policy of pay-as-you-go would produce wide fluctuations in taxes from year to year which would introduce an element of uncertainty undesirable in business. It is said that by borrowing it is possible to secure immediately the benefits of an improvement while the cost may be spread over a series of years; also that since future years are to be served by the expenditure, it is but fair that the income of future years should bear a part of the cost.

Justification of public borrowing

While there is some controversy as to which of these policies is in the long run most expedient, the following rules have been generally accepted for guidance in the creation of public debts:

First, borrowing should not be employed to meet current expenses except in anticipation of revenues, but should be resorted to only to pay for improvements of a permanent character or for emergencies such as a war or public calamity.

Second, when borrowing is resorted to, the period allowed for the discharging of the debt should not be longer than the life of the object for which the debt is incurred.

Classifica-
tion and
form of
debts

Debts of the states or of other public bodies are usually distinguished, rather loosely perhaps, with respect to their time of maturity and the form of the certificate or evidence of the debt, as funded, floating and current. The funded debt which has a long but definite period to run is evidenced by bonds or serial notes. Such debts are usually created as a result of some great emergency such as a war or flood, or of some expensive and permanent public improvement such as the erection of a state capitol, or the construction of a system of highways.

The designation, floating debt, is usually applied to indebtedness which has no fixed time to run, and for the payment of which often no definite provision has been made. Although its period is expected to be short, this form of debt is not directly chargeable to the operations of the current year. Evidences of floating debt, when they exist, frequently take the form of "treasury notes" or "treasury warrants."

Current debts are those which are incurred in the course of the current operations of government, and are presumed to be payable from the revenues of the current year. Such indebtedness is evidenced by book accounts, or by short-term paper variously known as "revenue loans," "tax-warrants," or "auditor's warrants."

When through bad financial management current debts are not met from the revenues of the year they become a part of the floating debt. When the state is so unfortunate as to have allowed a large floating debt to accumulate, it is sometimes funded, *i.e.*, the miscellaneous evidences issued from time to time are called in and replaced by a uniform series of bonds or serial notes. The transfer of current indebtedness to the class of floating indebtedness and the funding of floating debts not incurred for permanent improvements are indications of bad financial policy and will, if persisted in, lead to an impairment of the state's credit.

Debt
redemption

It has been said above that long-term or funded debts are represented by bonds or serial notes. Bonds are virtually a series of notes of like form bearing the same interest, the same date of issue, and the same date of maturity. The usual method of payment is by the accumulation of a sinking fund. This is a fund into which is to be paid periodically by the state a sum such as will, with accumulated interest, at the date of maturity suffice to redeem the bonds. Until recently the sinking-fund method of meeting long-term debts was almost universal, but was open to certain objec-

tions. It sometimes happened that the annual contributions to the fund were not regularly made and sometimes the accumulations of money thus made were impaired by unwise or perhaps corrupt management, so that at the date of maturity the fund was insufficient to meet the obligation.

The frequency with which these mishaps occurred was a reason why serial notes have to a large extent superseded sinking-fund bonds as evidences of indebtedness of this kind. By the serial-note plan the securities have a common date of issue as before, but are divided into a number of groups equal to the number of years allowed for payment of the whole debt. The several groups are arranged to mature in succession at intervals of one year until the debt is paid. Many arguments have been put forward for each of these plans of financing, the general conclusion being that while there is no material difference in the ultimate cost, the serial plan avoids the uncertainties attendant upon the accumulation and preservation of large sinking funds, and has the advantage of compelling the government to provide in its budget for both the interest charges and the redemptions falling due each year. This method is meeting with especial favor in local areas where special assessments are permitted to be paid in annual installments.

In public even more, perhaps, than in private finance, there is strong temptation to pay for present enjoyments with promises for the future rather than with cash. Those charged with the work of government for the moment like to be able to point to improvements made during their administration, but shun the opprobrium attaching to those who are responsible for tax increases. Hence there is ever present temptation to substitute for the rigorous methods of taxation the easier way of borrowing and leaving to succeeding administrations the unwelcome but inevitable task of repayment. The result of this tendency has been the imposition of constitutional restraints upon public borrowing. Besides the stringent limitations which have been imposed on the borrowing powers of local areas of government, limitations on state debts began to appear before the middle of the nineteenth century, primarily induced by the financial dissipations attendant upon the era of internal improvements. At the present time all but three states place restrictions upon state borrowing either as to amount or purpose or both, or require special authorization from the people before debt may be incurred. Except the three states of Arkansas, Missouri and South Carolina which permit no borrowing, those imposing the most

Limita-
tions upon
borrowing

stringent limitations permit the creation of debt for the suppression of insurrection and for the repelling of invasion. In many cases borrowing to meet casual deficits or to refund old debts is permitted. In a large number of states the government is forbidden to pledge the credit of the state for the benefit of private undertakings, or to assume their obligations. Likewise subscription for the stock of any private corporation is forbidden. In the states where the limitations are placed upon the basis of the amount borrowed, the maximum allowed varies from \$50,000 in Maryland and Rhode Island to \$2,000,000 in Idaho. Utah fixes the limit at one and one-half per cent of the assessed valuation of the state. In several of the older constitutions the limit fixed is so low as to prove a serious handicap in performing the services which are to-day demanded of state governments. This embarrassment is relieved in a number of states by the provision that the amount of indebtedness to be incurred and the range of purposes to be permitted may be enlarged by popular referendum. In some states the difficulty has been met by constitutional amendments which modify the narrow limitations.

Volume
of state
indebted-
ness

The growth of public debts in all ranges of government, central and local, has been of late as noticeable a phenomenon as has been the increase of public expenditures. The per capita increase in state debts in recent years has been from \$5.90 in 1915 and \$6.03 in 1916, to \$12.95 in 1923 and \$15.63 in 1924.¹³ The largest debts in 1924 were those of California, Massachusetts and New York, the latter reaching the total of \$319,429,820, or \$29.15 per capita. Several states on the other hand had debts so small as to be practically negligible, that of Nebraska being but \$525,720, or \$.39 per capita. Thus it appears that nowhere are state debts of themselves large enough to become a burden, though when to these are added federal and especially local indebtedness the total swells to considerable proportions.

The
financial
cycle

The administration of the state's financial affairs may be thought of as a cycle of operations following each other in endless succession. These operations include disbursement, appropriation, levy, assessment, collection, custody, and so around to disbursement again.

Attention may first be directed to the operations which have to do with the securing of revenue. It must be borne in mind that while the fundamental principles are the same, the details of financial administration in the several states vary widely. Consequently

¹³ *Financial Statistics of States, 1924*, p. 39.

there can be presented here only a conventional or composite picture which is not true in all of its details in any particular state.

The scale of fines and fees fixed by the legislature and collected by the administrative departments enforcing law or rendering services offers but a minor problem in financial administration. Fines and fees

This scale, as well as the rates which have been fixed for the special forms of taxation more recently developed, has usually been given a certain degree of permanency. For this reason it has become the custom, in the states which continue to levy a general property tax for state purposes, to adjust the revenues to the varying needs of the treasury from year to year by increasing or decreasing the rate of the property tax levy.

Following the passage of the general appropriation act and the other acts of the legislature appropriating money, it becomes necessary to make the levy for the property tax. While the act imposing the levy must come from the legislature itself, the actual fixing of the rate of the levy is often left to be determined by some administrative body, such as the tax commission. Assessment

Already, perhaps, the work of assessment of property for the purposes of this and local taxes has been begun. This duty is everywhere in the hands of local assessors selected, save in rare instances, by the local voters. The work of the assessors is to prepare a list of all persons holding property within their jurisdiction subject to the levy, and to determine the valuation to be placed on it for purposes of taxation. The statute ordinarily directs that property shall be listed at its "fair cash value," though in some states it is provided that it shall be listed at a designated percentage of such value. Real estate is usually actually viewed by the assessor, though the owner of personal property is frequently required to file a sworn statement of such property. If he so desires, the assessor may check such statement by a view of tangible personalty, but he is dependent upon the statements of the owner with respect to intangibles.

It was found very early that the assessment of certain forms of highly specialized property and property extending through more than one taxing jurisdiction could not be equitably assessed by local assessors. Consequently such property, including especially some forms of corporate property, is now quite generally assessed by state officials. Likewise the administration of the various forms of special taxes such as those on corporations, inheritances and incomes, has been withheld from the local authorities, and vested in state tax officials. These facts have already been alluded to.

Review
and
equaliza-
tion

The individual assessments having thus been made and the assessment roll prepared and laid open for inspection by the public, the next step is that of review and equalization. Where the town or township is an important area of administration these duties may be performed by a town or township board; but it is more often done by a county assessor or a county board known as a board of review or board of relief. The function here performed is to place upon the roll omitted property, to equalize valuations between individuals and between assessment districts, so that the burden of taxation may be equitably distributed. There is sometimes a county assessor who, in addition to his duties on the board of review, instructs the local assessors with respect to their work, supervises that work, and, in the states where some degree of central supervision has been established, acts as the agent of the state tax commission. In such states there is provided some form of appeal to the state commission from the acts of the county assessor and the board of review.

Upon the completion of the review and equalization by the local authorities, the results of the assessment are certified to the proper state authorities by whom, except in a few states, equalization is made as between counties. This work of making an equitable distribution of the burden among the counties is performed by a board of equalization usually composed of certain *ex officio* members, or is imposed upon the tax commission.

The tax
rate

With the total valuation of the state determined, the burden equalized, and the estimates of probable revenues to be derived from other sources in hand, the tax commission or other proper authority may now proceed to compute the rate of the state tax levy. Unless a deficit is to result, this rate when applied to the total valuation of property in the state subject to the general property tax, must produce a sum which, when added to the other revenues of the state, will equal the expenditures authorized by the legislature. The state rate when thus determined is communicated to the local authorities to be added by them to the various local rates to make up the total rate of levy. This total rate is made the basis of computing the contributions which are to be paid by individual taxpayers.

Collection

Aside from the special taxes and those assessed by the state authorities, taxes are collected locally at the office of the treasurer or sometimes at local banks, though in certain states the collector visits each resident taxpayer at his home or place of business. When the taxes are collected the state's share is turned over to the state

treasurer or deposited to the credit of the state in local depository banks.

Except in the case of sinking funds which are administered by Custody special boards in most cases, the treasurer is the legal custodian of state funds, although, as has been mentioned, sometimes departments or institutions are permitted to retain and administer their own income without its passing through the treasury. Originally the somewhat primitive practice prevailed of keeping the funds in the vaults of the treasurer's office, but since this deprived the state of the interest which might otherwise accrue, and since the expense of safeguarding the fund was considerable, funds are now in all but a few states deposited in depository banks scattered about the state.

In a large number of states where the fund system of finance prevails, the revenues in the state treasury are not all available for general state purposes. In these states, besides the "general fund" which is made available for such general purposes, there have been created certain "special funds." The legislature fixes by law certain specific purposes, and such proceeds cannot be drawn upon for other purposes. Where they exist these special levies must be taken into account and added to the rate levied for the general fund when the total state rate is made up. Among such special funds may in many instances be found a highway, an institutional, a university and a health fund, as well as several others. Sinking funds and various trust funds such as teachers' retirement funds are sometimes made the objects of special levies. These special funds have been created to make more secure the financing of the objects thus provided for, but they have constituted a serious handicap to the development of an effective budget system. Under the fund system it may easily happen that very desirable work in one department may be stopped for lack of money while at the same time a considerable surplus may be lying unused in another fund.

For more than half a century the state exercised no administrative control over the assessment and collection of taxes, merely receiving its share of the income from taxes assessed and collected by the local tax authorities. The local areas soon discovered that by making their own assessed valuations low they could provide for the needs of the local treasury by raising correspondingly the local tax rate, and at the same time shirk their just share of state taxes. As a result local valuations sank lower and lower, but with great inequality as between different districts. To remedy this condi- The tax commission

tion a measure of state control was introduced by the creation of the state boards of equalization, whose function has been pointed out above.

The introduction of various special taxes and the development of more complex and specialized forms of property demonstrated the need of still further measures of state action. The result has been the creation in a large majority of the states of a tax commission or, in two states, a single tax commissioner. Beginning in several instances as a temporary commission to investigate a concrete existing situation and report proposals of legislation, they became permanent bodies, usually superseding boards of equalization and vested in some cases with very broad powers.

The functions of the stronger commissions may be described as:

1. To instruct, advise and prescribe forms for local assessors.
2. To equalize assessments between local areas.
3. To hear appeals from local assessments and, if necessary, to make or order reassessments.
4. To assess certain forms of property.
5. To administer directly certain forms of taxes.
6. To make investigations and to recommend measures of legislation.
7. To these may be added in a few instances where the highest degree of centralization has been attained, to remove local assessors and to appoint county assessors.

The result of the creation of these central bodies has been the injection of new vigor and greater uniformity into the whole taxing system of the state.

Early
appropriation
methods

In early days, when state activities were few and expenditures small, the methods of dealing with financial problems in the legislature were simple. The head of each spending agency placed before the committee in charge of appropriations his estimates of financial needs. Since the problems involved were few and the matters dealt with were those of common knowledge, the committee could from its general knowledge reach a fairly accurate judgment as to the relative needs of various administrative services. With the multiplication of such services and their growth in complexity and technical character, the preparation of an appropriation bill by such methods became impracticable.

Every department head was likely, as a result of his experience, to become impressed with the opportunities for greater service to the

public which might be rendered by his department if funds were available. These he made the basis of earnest requests for increased appropriations. Thus, the committee without special and definite knowledge of real needs found themselves subjected to importunities from every side. The inevitable consequence was that those who were most insistent in their demands and were able to bring the greatest political pressure to bear secured the largest appropriations. Not only before the committee but among legislators generally, lobbying for appropriations was widely indulged in. It came about in consequence that the recommendations of departments were often ignored and appropriations increased through amendments offered by individual members on their initiative or at the behest of lobbyists. The result was a tendency to an ever-increasing total of appropriations. When the committee became aware that retrenchment was necessary, departmental estimates were pared without much discrimination and to the serious impairment of many worthwhile services. Occasional public demands for economy on the part of the public would result in general and unintelligent slashing of appropriations with equally disastrous results. In anticipation of such occasions, department heads were accustomed to increase their estimates beyond actual needs or what they might reasonably expect to secure. In addition to the appropriations recommended by the committee and embodied in the general appropriation bill, literally hundreds of measures carrying appropriations from the state treasury were introduced by individual members of their own initiative or at the request of various interested groups, and passed by the dozen without thought of their effect on the finances of the state.

Throughout it all there was lacking anything approaching a general financial plan for the state which envisaged the relative needs and merits of various state undertakings, and, at the same time, the sources of state revenues and their productivity. So long as the results of such methods were not recognized as a burden upon the taxpayers, no popular interest could be aroused in financial methods; but ultimately the increasing cost of government and the decreasing purchasing power of the dollar directed public attention to the financial chaos and led to demands for improvement. The exigencies of the World War gave impulse to the movement for economy with the result that the federal government and practically all of the states have undertaken financial reforms which have been collectively spoken of as the "budget movement."

Nature of
a budget

The term "budget" has come rapidly into the popular vocabulary and is frequently applied to institutions which fall far short of a true budget. Properly defined, the term "budget" means a comprehensive financial plan for a definite period, based on careful estimates of expenditure needs and probable income of government. It is not an estimate of expenditures alone, however carefully prepared and elaborately set forth, though estimates are one element in a budget. Neither is it an appropriation act merely, as it is often assumed to be, since this act is but an instrument for carrying the budget plan into effect. Besides being a presentation of estimates of expenditure and of probable revenue, the term budget properly presupposes an intelligent consideration by some central authority of the various services to be performed, their relation to one another and to the welfare of the state as a whole, and the wisest distribution of available funds among these services. It implies further the consideration of revenues, whether they shall be diminished or increased, and if either, at what point and to what extent. All these elements are necessary to an effective budget.

As an expression of financial policy, the budget must be formulated in the light of past budgets and the obligations incurred under them, as well as with a view to the obligations upon future years which the adoption of the current budget may entail. Public undertakings, such as extensive public works begun in the past and as yet incomplete, place an obligation upon the current budget which cannot wisely be ignored. Likewise, present extraordinary expenditures not of the nature of permanent improvements may be met by borrowing and thus relieve present tax burdens. Those whose duty it is to formulate the budget must face the fact, however, that such methods will entail upon future budgets a heavy and perhaps embarrassing burden of debt liquidation. Few if any of the budgets now prepared in the states measure up to the full stature of the ideal budget, but all constitute at least a step away from the old condition of chaos and in the direction of creating a more effective instrument of financial control for popular government.

Budgetary
cycle

It has been suggested that financial administration as a whole may be thought of as a cycle of operations, of which appropriation is one element. So may the making of appropriations be thought of as, at the same time, constituting an element in a budgetary cycle made up of the following steps: making of reports, preparing of estimates, formulation of a plan, consideration and adoption of the plan, making appropriations, the control of the execution of the new

plan, and back to reporting which was the point of departure. These may be reduced to three major steps: formulating, determining and controlling the execution of the plan. The last should be taken by the administrative authorities, the second by the legislature, and the first shared between the two.

Some of the conspicuous mistakes in the conduct of our government have arisen from a failure to preserve this distribution of functions. While the legislature may initiate new policies in their broader outlines, they cannot successfully do more than criticize or approve the financial plans which are presented for their consideration. They have not the information to go further, nor have they the means of securing it for themselves. Furthermore, they have not the time to mature a plan as elaborate and many-sided as a budget. It is highly proper that a legislature should in an appropriation act fix the bounds of expenditure for the various activities of government, and insist through the agency of a controller that their will be complied with. But any attempt by the legislature to control the discretion of administrative officials in the daily performance of their duties is quite impracticable. Control for efficiency, like the formulation of financial policy, can be performed successfully only by administrative officers in daily touch with the service-performing and the law-enforcing agencies of the state.

The legislature, as the policy-determining and fund-granting branch of government, must be able, before it can act wisely, to answer for itself these questions: Have each of the present activities of the government proved of such value that they should be continued? What new activities, if any, shall be undertaken by the state? What sums shall be expended for the support of each activity? How shall the costs of government be met? The purpose of the budget is to assist in answering these questions.

The first step in the formulation of the budget is the gathering of information. This is secured, in the first place, from the several departments, institutions and branches of the state government upon uniform estimate blanks. Upon these are shown in considerable detail the amounts expended for various purposes during the financial period just closing, together with estimates of the needs of the departments and institutions for the approaching financial period as seen by their respective heads. In some states this information is supplemented by investigations conducted through visits to institutions, and studies of the administrative methods of the several departments. With such information in hand and after hear-

Preparation of the budget

ings granted to representatives of departments and institutions, the budget authority proceeds to prepare a financial plan which, in view of the general welfare, shall make most advantageous distribution of the state's revenues. If in the judgment of the budget-making authority, the anticipated revenues will not be sufficient to meet such expenditures, there should be included, along with the rest, proposals as to the means of meeting this deficit, whether by increase in taxation or by borrowing. Accompanying the above plans, a complete budget should carry a statement of anticipated revenues, a debt statement, and a balance sheet for the period just closing. The budget thus formulated, and in some states accompanied by a tentative appropriation bill designed to embody the budget proposals, is transmitted to the legislature.

The budget and appropriation bill are referred to the proper committee which proceeds to discuss and to hold hearings upon the bill. At these hearings interested parties both within and without the government may present their views. In a few states there is appointed, immediately after the election of legislative members, a special committee of the two houses which makes its own independent investigation, of necessity not exhaustive, of financial needs.

In two states the legislature is permitted to decrease but not to increase appropriations proposed by the budget authority. In some others no bill carrying an appropriation can be passed until after the regular general appropriation bill has been enacted. In these states, in order that the budget balance may not be disturbed, every such additional bill involving an expenditure must contain also provision for raising the money thus appropriated.

Should the legislature decide that new agencies of administration or new services are to be undertaken, provision for financing them may either be introduced into the general appropriation bill, or included in the act initiating the new undertaking.

Budget-
making
authority:

The proper location of the budget-making function has been a much controverted question, and three different answers to the question have been enacted into law. First: in New York, in what has been called the legislative budget, an attempt was made to leave the preparation of the budget, as well as the framing of the appropriation bill, in the hands of a legislative committee. This solution has found favor elsewhere only in Arkansas and has been abandoned in the state of its origin. Second: following the example of Wisconsin, the first state to institute a budget system, about one-third of the states have intrusted the task to a budget board.

Varying in their composition, these boards are found made up of administrative officers serving *ex officio*, of members appointed by the governor, of a combination of *ex officio* and appointed members, and of both administrative officers and members of the legislature. Third: somewhat more than half of the states have adopted the executive budget, an arrangement whereby the budget is formulated by an immediate agent of the governor and is placed before the legislature as the proposal of the governor himself.

The legislative budget is open to some of the same objections as those which applied to the old method of framing the appropriation bill before budgets were introduced. The most valid objection is that it places the task in the hands of persons who are not in touch with the work and needs of the departments and institutions, and who are not responsible for the success or failure of the plan if adopted.

1. Legis-
lative
budget

The executive budget, on the other hand, suffers from certain disadvantages which arise from our adherence to the doctrine of the separation of powers. In the first place it is the work of an authority outside the legislature and one which is traditionally viewed with some jealousy by that body. In the second place, there is no direct representative of the governor present in the legislature to explain and defend the proposals. Furthermore, in the states where the governor is not the real head of the administration, representatives of the various administrative departments feel free to use their influence in the lobby in their own behalf to secure larger appropriations, thus defeating some of the purposes of a budget. It was to anticipate the last weakness that the Maryland and Utah constitutions forbid the legislature to increase appropriations for the administrative services proposed by the governor. To make the executive budget fully effective certain other changes should be instituted.

2. Execu-
tive
budget

1. The administrative system should be reorganized into a centralized system with the governor as the real head.

2. Power should be given to the governor to veto items in the appropriation bill.

3. The governor or his authorized representative should have a place on the floor of the legislature with power to participate in debate.

4. The governor should be given sufficient control over expenditures after appropriations are made, so that he may reasonably be

held responsible for the results of the administration. Nowhere among the states have all these steps been taken as yet.

3. Admin-
istrative
budget

The various types of budget boards which have been set up have been devised with the foregoing limitations in mind. There has been an attempt to secure a combination of the benefits of the intimate knowledge and experience of the administrative officer, and a degree of centralization of responsibility which would otherwise in some quarters be looked on with suspicion. Likewise, this plan seeks to secure a degree of harmony between executive and legislative departments which is highly desirable but which is sometimes sadly lacking under the executive type. This is done by including on the board along with administrative officers certain members of the legislature.

It is not customary in this country to give administrative officers a place in legislative debate as is the case in countries under parliamentary government. The inclusion of legislative members on the budget board insures the presence on the floor of the legislature when the budget is under discussion, of a few persons who participated in its preparation, who can discuss it with intelligence, and who can offer the necessary explanations.

Fiscal
control

The third of the larger steps in the budgetary cycle is the control over the expenditure of funds after they have been appropriated. Such control is necessary to the end that the money shall be expended both legally and effectively. It is in connection with this step that the financial administration in the states as a whole is most defective.

The historic method in this country was to make lump-sum appropriations to departments and institutions, leaving to the several heads entire discretion as to its use. It was not long before it was discovered that under this plan funds were frequently used for purposes quite different from those intended by the legislature. It was believed when this abuse became evident that it could be avoided and a proper control secured by a detailed itemization of appropriations in the act, supplemented by watchfulness on the part of the auditor to see that these detailed requirements were complied with. By this method legality of expenditures can be secured, but the matter of a wise discretion in their use is not reached. Moreover it has been found that so high a degree of itemization hampers the judgment of administrative officers and hinders efficient operation. To secure a proper degree of control combined with an op-

portunity for a reasonable degree of discretion, new methods have been devised in a considerable number of states. Appropriations are made to each department under a few main heads, *e.g.*, personal services, supplies, equipment, and capital outlays. Transfers from one of these heads to another in emergency are permitted with the consent of the budget authority. In a few states a further instrument of fiscal control has been set up. In Illinois, each department and institution is required to make such an allotment of the proportion of its appropriation under each head as it proposes to spend in each quarter of the year. This must be approved by the governor and departed from only with his approval. In Pennsylvania the allotment is made monthly and approved by the governor, and the auditor may draw no warrants until such approval is secured. Furthermore, in that state at the end of each month the head of each department must report to the Department of Finance the expenditures made under the allotment, and any departure therefrom must be explained. It is the purpose of these newer devices to substitute for the old rigid legislative control of expenditures an administrative control which on account of its flexibility lends itself more readily to an efficient and economical conduct of the state's business.

Ignoring the manifold differences in detail, it is possible to trace what may be called the typical method by which state funds are disbursed. It must be remembered that an appropriation is merely a permission from the legislature to some spending agency to spend a certain amount of money for a specific purpose if such amount is in the treasury unencumbered, and to the treasury to pay that amount from any funds available upon presentation of proper vouchers. Special appropriations may become effective immediately upon passage, but the general appropriation act ordinarily becomes effective at the beginning of the next fiscal year after date of passage. This may occur almost immediately, but is frequently some months in the future. Since biennial sessions are the general rule among the states, regular appropriations are made for each of the two following years separately.

After the appropriation act has become law the auditor opens accounts with each of the spending departments and credits to each the amounts appropriated to it under the proper heads. When an obligation is incurred by a department, the bill or memorandum is certified by the department and presented to the auditor. If the latter finds that the expenditure is authorized by law, that there

Disburse-
ment

remains unexpended a balance to the credit of that particular heading of appropriation, and that there are funds available in the treasury, he draws a warrant, or check, on the treasurer and sends to that officer a memorandum of the fact. This auditor's warrant may be presented directly to the treasurer for payment, but in practice it is customary for the creditor to deposit the warrant in his own bank like any other check. From the bank of deposit it goes through the clearing house to a state depository bank and thence ultimately to the treasurer, to be retained by him as his voucher.

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CHAPTER TEN

THE GOVERNOR

HISTORICALLY the state governor is the lineal descendant of the colonial governor. It was, however, not the governors of the eleven so-called "royal" and "proprietary" colonies, but rather those of the two "charter" colonies of Rhode Island and Connecticut, that served as the prototypes of the state governor. In these colonies, the governor was a citizen of the colony, chosen by the colony itself, and directly responsible to it. He served for a short term and was without power of appointment or removal. He could neither adjourn nor dissolve the colonial assembly, nor could he veto the acts of that body. At every point his powers were closely circumscribed. The model furnished by these governors was faithfully followed by the framers of the state constitutions.

Historical:
(a) Origins

The governor of the royal and the proprietary colonies was a figure of quite a different sort. He was appointed by an outside authority, king or proprietor, and usually had little knowledge of, or sympathy with, colonial problems. He was vested with power to appoint and to remove all colonial officers. He could summon the legislature and adjourn or dissolve it, and had an absolute veto over its acts.

Though the governor created by the states was endowed with no such extensive powers, the recollection of these royal governors and their attitude toward the colonies was fresh and uppermost in the minds of the people. The effect was to inspire in them an intense suspicion of the office and a keen hostility to executive authority in general. These sentiments expressed themselves very clearly in the narrow range of authority given to the state governors. It is a survival of the same sentiments which explains the failure in more recent times to give to the governor that place at the head of the administrative system of the state which is accorded to the chief executive in the federal government and in most foreign countries.

Under the early constitutions, the governor was elected by one of two methods. In New England, where the habits of direct democracy were most firmly fixed, and in New York, which was influenced by New England traditions, the method of direct popular election

(b) Early characteristics

was employed. In New Jersey and Pennsylvania, and in all the states to the south of these, election was by the legislature.

The usual length of term was one year, though in a few states it was two years. In New York the term was fixed at three years.

The powers of the colonial governors, as they had existed in most of the colonies, were in the states diminished in at least three important particulars. First, the governor in the beginning in a few instances retained some shreds of the power of appointment. In place of this, however, was soon substituted election, either by the people, or by the legislature. Second, the power to prorogue and dissolve the legislature disappeared, and in almost every case the power to veto was also lost. Third, in the colonies the governor in many instances had added to his other functions that of head of the highest court. This judicial function was taken away from him in practically every case. Further than these, in a number of states, the remnants of power which he was allowed to retain were exercised only with the consent of an executive council. Within a short time the election of the governor directly by the voters became the rule, though in New Jersey election by the legislature survived until 1844. The term of office, too, was in course of time increased in most states to two years and ultimately in many to four years.

The nineteenth century witnessed a gradual but steady increase in the power vested in the governor. This movement kept even pace with the waning prestige of the legislature. In the first place, the veto power was generally, though not in all cases, restored. After the Civil War, there was a rapid growth in the number of state functions, and this in turn called for the selection of many new administrative officers. Under the influence of the democratic sentiment then prevailing, the first impulse was to select these at the ballot box. It soon appeared, even to the most confirmed democrat, that this was impracticable, and their choice was then reposed in the governor. Thus, before the close of the nineteenth century, the power of appointment had become very extensive. Gradually, though more sparingly and reluctantly than in the case of appointment, he was given the power to remove those whom he had appointed. Thus, through the powers of appointment and removal, the governor came also to gain a considerable degree of control over the state administrative system.

Qualifications

Turning now from the successive steps by which the position of the governor has been strengthened, the structure and powers of the office as they exist to-day may be made the subject of inquiry.

In the earlier years, not every voter might become a candidate for the office of governor. A property qualification somewhat higher than that required for voting was the general rule. When property qualifications for the suffrage were abolished, requirements of like character for holding this office, as well as all other offices, were generally done away with. At the present time, it is stipulated that, besides being a citizen of the United States, he must have attained a certain age, commonly fixed at thirty years, and have been a citizen of the state for a specified time. Such age and residence requirements are of little real importance since it would be unusual that a person not having these qualifications would be seriously considered for the office. It is interesting to observe how such requirements creep into constitutions, and, having once been incorporated there, are reiterated in state after state even though they have little or no practical significance.

Until within recent years the governor, along with the other elective state officers, was nominated in the state convention of his party. At the present time, the direct primary has been substituted for the convention in a considerable majority of the states. In New York, the direct primary was made use of for a number of years for the nomination of governor, but there has recently been a return to the convention system. In certain states, the governor is nominated in the primary, but other state officers are still selected in convention. In one state at least, Indiana, the nomination goes to the convention only in case no candidate receives a majority of the total votes of the state at the primaries. The use of the direct primary for the nomination of candidates for local offices appears to be firmly established, but there has been widespread agitation for a discontinuance of its use in the case of the governor and other state officers. Thus far, however, New York is the only state that has taken this step with respect to the governor. A result of the introduction of the primary has been to multiply candidates, but it has not been shown that the quality of the candidates nominated has been materially improved. Indeed, it has been urged that the expenditure, both of money and time, incident to nomination in a state-wide primary is so great as to deter many desirable men from entering the race. It is probably true that the introduction of the primary has made control by the party organization less secure. If this be held desirable by some persons, others may urge in reply that party responsibility is likewise weakened thereby.

Nomina-
tion

The election of the governor is by popular vote in all states except

Elections

Mississippi, where a rather intricate combination of popular and electoral votes is employed. A plurality vote is sufficient to elect except in Georgia, Maine, Mississippi, and Vermont, in which states a majority is required. In cases where the requirement of a majority to elect sometimes results in no choice by the people, the election is thrown into the legislature. To avoid the delays and uncertainties incident to election, the tendency everywhere is toward deciding all elections by plurality vote. The date of the election of governor and other state officers is usually fixed in November of the even-numbered year to correspond with the election of the members of Congress and of the members of the legislature. In five states—Kentucky, Indiana, Maryland, Mississippi, and Virginia—the election is held in the odd-numbered year.

Term

In the earlier constitutions, as has been suggested above, state officers were for the most part chosen annually, although it was customary to reelect them for a second or even a greater number of terms. Before the middle of the nineteenth century, there was perceptible a distinct tendency toward a longer term for the governor. Two influences seem to have been at work to bring about this extension of official terms. In the first place, the growth of population and business made the cost and inconvenience of annual elections an increasing burden on the community. In the second place, the practice of rotation in office, when applied annually, resulted in too great instability of government. The result of these and perhaps other considerations has been that the governor's term has been extended, and to-day is two years in twenty-four states, four years in twenty-three and three years in one.

The two-year term is somewhat more prevalent in the northeastern and northern states, while the four-year term is more common in the southern and western states. However, Pennsylvania, Indiana, and Illinois have a term of four years, while in South Carolina, Georgia, Arizona and New Mexico, as well as in others in the same regions, the term is two years. Fear that the governor might use his power to secure his own renomination and election has led in Pennsylvania and Indiana to a stipulation in the constitution that that officer may not immediately succeed himself. Equal weight seems not to have been given to the opposing argument that by denying him reelection there has been taken from him the strong incentive to good service afforded by the possibility of a second term.

Where not thus forbidden, it is not uncommon for a governor to

be reëlected for a second term, while a third term, though by no means unknown, has been much less frequent. In one of the eastern states, a governor has been elected in recent years for as many as seven terms within a period of twenty years.

The governor's office has in a few notable instances, including in recent times the cases of Roosevelt, Wilson and Coolidge, served as a stepping-stone to the presidency. On more frequent occasions, governors have found the United States Senate the next step upward on the political ladder. The prevalence of this particular aspiration among governors is recognized in Utah, where the constitution specifically prohibits the election of the governor to the Senate.

The prevailing suspicion of executive authority led in the earlier days to the fixing of the salary of the governor in some constitutions. In more recent times, the wiser course has been pursued of leaving the matter of salaries to be determined entirely by the legislature. Following the trend in other public offices as well as in private employment, the governor's salary has been gradually increased. The office of governor has always been regarded as the highest honor within the gift of the people with the exception, perhaps, of the office of senator at Washington. The salary paid has, therefore, been looked upon as an honorarium rather than as compensation commensurate with services performed. The dignity, social prestige, and political influence which the office carries has been such that candidates have not been lacking despite the moderate salary.

Compensation

Until a very recent date, the salary of the governor was in some of the older states as low as one thousand dollars a year. At the present time, about one-third receive five thousand dollars, one-fourth receive a smaller sum, and the remainder range upward to a maximum of twelve thousand paid in Illinois. Sometimes an executive mansion is provided and maintained by the state, and in some instances an allowance is made for defraying other expenses of a semi-public nature. To maintain the independence of the chief executive from pressure by the legislature, it is not uncommon to find provision made that the salary of the governor shall not be diminished during his term of office.

The governor may be removed from office either by impeachment or recall. In cases of impeachment, charges are preferred by the lower house of the legislature and tried by the Senate. Since conviction of the governor would result in the elevation of the lieutenant governor to the office in question, that officer does not preside over the Senate in the trial of the governor. It is frequently pre-

Removal
by:
1. Im-
peachment

scribed that upon such occasions, the chief justice of the state shall preside.

Thus far in our history only ten governors have been impeached. Five of these cases may be considered as somewhat abnormal, since they grew out of the troubles of the Reconstruction days in the South. The more recent cases are those of Sulzer of New York in 1913, Ferguson of Texas in 1917, and Walton of Oklahoma in 1923. In a few instances, governors have anticipated trial upon impeachment by resignation while under fire. As a means of removing a governor, impeachment is an even less effective instrument than when applied to other offices.

In most states, a special session of the legislature can be called only by the governor. It, therefore, is virtually a fact that impeachment of a governor can take place only within the limited period of a regular legislative session, which is held in most states once in two years. Furthermore, in the case of a governor, holding office for two years, the only regular legislative session during his term of office occurs immediately upon his induction into office, and has adjourned before he has much opportunity to display his unfitness. In the case of the four-year governor, the second session occurs at the middle of his term and, therefore, in most states impeachment holds no terrors for him during his last two years in office.

2. Recall

In eleven states the governor, like other executive officers, may be removed by recall. Thus far, but one governor, Frazier of North Dakota, has been removed by this method. This furnishes a means of removal for reasons which might not furnish grounds for impeachment. Such might be cases of gross misuse of official discretion where no specific violation of ministerial duty could be alleged. Recall may be employed, too, as an alternative in cases of impeachable offenses. With the drift to longer terms of office, there came a demand for a method whereby the citizens themselves might secure relief from an undesirable officer. The recall is the solution which has been adopted.

Succession

Succession to the office of governor is in most instances vested in the lieutenant governor. In the few states where there is no lieutenant governor, the president of the Senate or the speaker of the House of Representatives succeeds to the vacant office. The valid objection may be offered to this arrangement that neither the president *pro tem* nor the speaker is a proper successor to the office. Either of these persons may at any time happen to be of the opposite political party from the person whom they are to succeed.

Thus the expressed will of the voters as between parties would be defeated. Furthermore, neither of these officers is the choice of the people of the whole state, but of a district only. With the coming of the governor to be the real head of the administration, as is the case in the states having a unified administration, the problem of succession takes on new importance. Under such conditions, the question might be raised whether the succession ought not to pass to the head of some designated administrative department. Thus it would be assured that the policies inaugurated by the administration would be carried forward.

Under our federal system of government, the states are bodies of general powers. Consequently their governments may legally exercise all authority which has not been denied to them. This general and residuary power possessed by the states is, however, vested in the legislature except as otherwise provided for in the state constitutions. As a result of this, the governor possesses only those powers which have been specifically conferred upon him. Even these enumerated powers are construed narrowly by the courts; *i.e.*, in case of doubt whether or not a certain power rests in the governor, the presumption is that it does not. There occurs in most constitutions the statement that "the executive power" or "the supreme executive power" shall be vested in the governor. To this is added the statement that it shall be his duty "to see that the laws are faithfully executed." It has been repeatedly decided by the courts that neither of these provisions is to be construed to confer upon the governor any specific power in itself. The words are said to be employed merely as descriptive of the general nature of the governor's powers, or as, at most, imposing a general duty of supervision.

The governor's powers or functions may be classified in various ways, especially either according to their source or according to their character. In the first place, according to their source, the governor's powers may be legal or extra-legal.

The legal powers are those which are imposed expressly or impliedly by the constitution and statutes of the state. The extra-legal powers are derived from his position in the partisan political system, and from his personal political influence. It might, then, be more appropriate to speak of this extra-legal force in terms of "influence" rather than of "power." Although the governor is not generally looked upon as the official head or leader of his party to the same extent as is the president in the national party as a whole,

Powers

General
characterPowers
or
functions:
classification1. According to
source

still it is evident that to have secured the nomination he must be a person of considerable influence in the party. Much of his political influence comes as a result of his legal powers. If he has authority to fill a large number of positions by appointment, his influence with those who desire positions for themselves or their friends will be great. If he has power to recommend measures and appropriations to the legislature for enactment and to veto acts when passed, his influence with those desiring legislation or appropriations will be profound. Furthermore, there exists that clear and growing tendency on the part of the public, already referred to in connection with the legislature, to look to the governor for leadership in the formulation of state policies, and in securing their realization when enacted into law. Acting in this rôle of popular leader, the governor has, by the creation of a public opinion, been able to exert an influence which reaches far beyond the powers conferred upon him by law. Since these powers or influences are nowhere formally set down, they are elusive. They vary with the personality of the individual, are difficult to evaluate, and defy complete enumeration. But any person who has observed closely the practical working of state government will concede that they may constitute a very real force, and in the hands of a strong personality may assume large proportions.

In the second place, according to their character, the governor's powers or functions may be classified as executive and legislative.

2. According to character

His executive functions are those which he exercises as head of the state, representing it as a whole in its corporate capacity, as well as in supervising the carrying into effect of the policies formulated and enacted by the legislative branch of government.

His legislative functions are those which he performs when participating in the determination and formulation of the policies of the state.

It should be clearly perceived that the line of division is not the same under the two methods of classification herein suggested. Some legal powers are executive and others are legislative. For example, the legal power to appoint is executive in character, while the power to veto is legislative. In the same way, some extra-legal powers are executive while others are legislative. For example, the extra-legal influence which the governor exerts to secure the coöperation of administrative officers over whom the law gives him no power of direction is executive, while the influence exerted to secure from a legislator consideration for his proposals is of a legislative char-

acter. In this connection it should be noted, too, that he often makes use of his unenumerated and undefined extra-legal influence to support and reinforce his legal power. Thus it comes about that the actual influence which the governor exerts in the state is due to a constant mingling of legal and extra-legal forces.

The functions which the governor performs as chief executive may be subdivided. There may be distinguished those which he exercises as head of the state and those which he exercises as supervisor of the administrative work of the state.

Executive
functions
subdivided:

The functions which the governor performs as head of the state are somewhat miscellaneous, but they all arise from the fact that in certain situations it is highly convenient, if not absolutely necessary, to have some one individual who may personify the power, the dignity, the unity, and, if one pleases, the personality of the state. Such a head is especially desirable upon ceremonial occasions at home, and in maintaining contacts with individuals and public authorities outside the state.

1. As
head of
the state

First among the functions performed as head of the state may be grouped a number of duties of a somewhat formal nature. One of them is that of accepting the service of legal papers issued against the state. An example of this would be when a summons is issued for the state to appear in the Supreme Court of the United States to answer any suit begun against it by another state. Again, it is the function of the governor to represent the state on ceremonial occasions within its limits, such as public dedications, the welcoming of distinguished public visitors, or on occasions when the state is to be officially represented outside its borders, such as at the inauguration of a President. Yet again, the governor serves as the official channel of communication between the states and the federal government or other states. A familiar example of this is to be found in the formalities connected with the extradition of persons accused of crime.

In the second place, the governor is the military head of the state. Under most of the constitutions, the governor is made the commander-in-chief of the armed forces of the state, except when they are called into the service of the United States. As such, he may appoint and commission military officers, make rules for the government and discipline of the forces, review findings of general courts-martial, and call out the National Guard as a state militia to suppress insurrection or to repel invasion. Since the organization of the militia as a "national guard" under the National Defense

Act of 1916, the organization and discipline of forces have been so fully prescribed by federal statutes and army regulations that the governor's powers in these directions are seriously diminished.

It is not customary for the governor, in his capacity as commander-in-chief of the military forces of the state, to take any active part in military affairs further than to designate the occasions when troops are to be called into active service. The actual command in the field is vested either in the adjutant-general or in some other commissioned officer. In a considerable number of states, especially among the older ones, the governor maintains a personal military staff composed of certain of the higher officers of the militia and a number of civilians holding honorary commissions. The activities of the governor's staff are confined to military parades and other ceremonial occasions.

These functions as head of the state are interesting historically, though, with the exception of the control over the militia, no longer of first importance. The function of personifying the power and dignity of the state is a last remnant of the ancient prerogative of the sovereign. This function has descended to the state governor through the colonial governor who was vested with vice regal character. In the older states, in this connection, many quaint ceremonies and customs survive to remind the observer of these origins. An interesting topic for reflection is the possible connection between the disappearance of these symbols of the dignity and authority of the state and the marked decrease in the respect shown for law among the citizens.

The power to grant reprieves, commutations of sentence, and pardons is vested in the governor. This function is, perhaps, more judicial than executive in character. It may be mentioned at this point since it, too, is a survival of the royal prerogative to dispense justice and mercy.

The second subdivision of the executive function of the governor is that of supervising the administrative work of the state.

2. As
head of
the ad-
ministra-
tion:

During the first years of the nineteenth century the remnants of the old power of appointment, which had persisted from colonial days, slipped from the hands of the governor. Although some of this power was given to the legislature, popular election of all officers became the general rule everywhere. Soon after the middle of the century, there began a perceptible swing in the direction of increasing the governor's power to appoint minor officials. This revival of administrative authority was due to a number of reasons.

The practice of filling administrative places through selection by the legislature violated the generally accepted doctrine of the separation of powers. Moreover, legislative selection fell under the influence of spoils methods with the usual unsatisfactory results. Under these circumstances, the abiding faith of that generation in the ballot box led them to resort to popular action. But at the same time, the number of services undertaken by the state, and consequently the number of new officials, was increasing rapidly. The result, if all of these were elected, would be to increase the length of the ballot until it became unwieldy. It was perceived by some that whatever theories may be held concerning democracy and the ballot, popular election is not a method suited to the selection of those officials who must possess technical or professional qualifications. All these considerations led during the latter half of the century to a great extension of the governor's power to appoint administrative officers. Still more recently, the evolution of the idea of securing efficiency through a centralized administrative control has resulted in the transfer of a still greater number of offices to the list of those filled by the chief executive. It still remains true in all but a few states that the incumbents of the older state offices, such as secretary of state, treasurer, auditor, and attorney-general are elected by the voters, or in certain instances by the legislature. With these exceptions, it is now the general practice for the governor to appoint the administrative officers of the state. It should, then, be noted that certain state officers as above mentioned appear on the state ballot along with the governor and lieutenant governor, not because they are of a different character or of greater importance than others, but merely because they are of earlier creation.

(a) Power
of
appoint-
ment

The power to appoint is sometimes derived from constitutional provision, but more often from statute. The constitution specifies certain offices which are to be filled by election and others perhaps by appointment; but there usually appears also a general statement that the appointment of all officers not otherwise provided for in the constitution shall be by the governor. As a consequence of the present wide range of state activity, the number of appointments now made by the governor is in most states very large.

The power of appointment is, however, in many states subject to very real limitations. First, it may be limited by an executive council. This is true only in the states of Maine, New Hampshire, and Massachusetts where, alone, the council has been retained from colonial times. Second, this power may be limited by confirmation

by the Senate. In about half of the states it is required that the governor submit his appointments to the Senate for confirmation. In one state, Pennsylvania, with respect to certain of the highest officers, confirmation must be by a two-thirds vote of the Senate.

The practice of subjecting the appointments of a chief executive to confirmation by some independent body, such as a senate, seems seldom to have served any useful purpose. It was doubtless adopted out of deference to the out-worn theory of checks and balances. It has been defended on the grounds that it serves to "check" unfit appointments of the governor, and that since the governor cannot know personally the character and fitness of candidates for appointment from all parts of the state, that knowledge will be supplied by the senators from the particular neighborhood from which the candidate comes. The gradually increasing body of opinion opposed to senatorial confirmation is based, in the first place, upon the contention that appointees in those states where confirmation is required present no outstanding superiority over those selected by uncontrolled appointment. Moreover, it serves to destroy the personal responsibility of the governor for appointments made. Since the governor is actually held responsible by the public for the success or failure of an administration, he should have a free hand in the selection of those officers who exercise discretionary powers. Senatorial confirmation in the states has not thus far led to the development of the practice of senatorial courtesy, as has been the case at Washington. But it may easily serve as a means of the political bludgeoning of the governor which may be worse in its effects than the evil which it was created to prevent.

The appointing power of the governor is limited, in the third place, by civil service laws. Civil service laws in their actual application serve for the most part to restrict the power of department heads rather than that of the governor, since they apply chiefly to the selection of minor officers not chosen by the governor. These laws do, however, serve to lessen the influence which the governor might otherwise exert through his political domination over department heads.

(b) Re-
moval

Whereas it has now been definitely settled in the federal government that the power to appoint carries with it the power to remove officers, no such rule has been established in the states. The governor possesses only such power of removal as is expressly conferred upon him by the constitution and by statute. As a matter of fact, the power to remove officers seems in all states to have

been conferred only with great reluctance. In certain of the older states at an early day, and especially in New York under the council of appointment, the power to remove was at first made coextensive with the power to appoint. With the swing of sentiment to favor the popular election of all public officers, the executive power of removal fell into disfavor. It came to be thought a most undemocratic proceeding to permit those who had been chosen by the sovereign people to be removed by another elected officer. Along with the more recent development of the power to appoint, there has come also a considerable power of removal. In most states the governor may remove many, and in some states all, of those whom he appoints. But contrary to the rule in the federal government, wherever confirmation by the Senate is required for appointment, it is usual to require a similar approval for removal. In the states which have within recent years undergone administrative reorganization, the governor has been given power to remove all department heads at will, except those otherwise provided for in the constitution. The general rule is that officers elected by the people can be removed only by impeachment. Nevertheless, in Michigan the governor may, during the recess of the legislature, remove any public officer; and in New York he may suspend the elected state treasurer. Again, the general rule is that locally elected officers cannot be removed by the head of the state, although New York, Michigan, and Wisconsin comprise a small group where the governor may remove certain local officers whose duty it is to assist in the enforcement of state law. Among such local officers are the sheriff and the district attorney. In a few states, certain elective officers, especially judges, may be removed by the governor upon "address," *i.e.*, formal recommendation made by both houses of the legislature. In all cases, unless it is specifically provided that the incumbent holds office during the pleasure of the governor, removal must be for cause, and the person accused is entitled to have notice of the charges against him and an opportunity to be heard. The grounds on which removal is permitted are usually prescribed as "incompetency, neglect of duty, or misconduct in office."

There are generally to be found in state constitutions the statements that "the supreme executive authority" shall be vested in the governor, and that it shall be the duty of the governor "to see that the laws are faithfully executed." However sweeping these phrases may seem to be as statements both of power and of duty, it has repeatedly been decided that they convey no authority unless sup-

(c) Direction

ported by some specific grant of power. Such grants of the power of general direction and control are very rare. To an increasing degree the governor is now being held responsible by the public for any failure to secure satisfactory results in any branch of the state service. Unfortunately the growth of public sentiment in this direction has been accompanied by no corresponding increase in his legal power to bring those things to pass. The governor to-day generally finds himself held responsible for many things over which he has little or no control.

The powers of the governor over the administration are partly legal and partly extra-legal. They are derived from his powers to appoint, to remove, to require from administrative officers information concerning their departments, to investigate public officers, and, finally, from his partisan political position. It is assumed that the governor will appoint persons over whom he can exert a considerable degree of control during their term of office. On account of his general political influence, this is likely to be true, but only within limits. Control through appointment alone is bound to be uncertain because there is no means whereby to enforce compliance. It is the power to remove, and especially to remove at will, that gives to a chief administrator real control over his subordinates. Since his power to remove at will is in most states narrow, so is his control based upon this power likewise narrow.

Again, it should be pointed out that a most important result of the recent reorganization of the machinery and the centralization of administrative authority which has taken place in a number of states, has been to build up a strong power of direction in the hands of the governor.

Through the power to require information and to investigate the conduct of officers, the governor gains a considerable leverage of control. Upon the basis of information thus gained, he may institute proceedings against an officer for positive misconduct, even though the power of removal has not been given to him.

Through the power to make public information gained, he may exert a considerable influence over the discretionary acts of officers. On account of his influence with the party organization, his power as representative of the whole people to create public opinion, to approve warrants, together with his share in the making of the budget and in the enactment of laws, there is created a control of a political nature which no administrative officer, however independent legally, can lightly disregard.

Until a very recent date, any control of the governor over the financial administration of the state was quite indirect and shadowy. Through the financial recommendations contained in his message, and his power to veto appropriations, an indirect control was exercised over the general course of financial affairs. The time-honored theory is that each official is responsible to the law for the expenditure of funds in accordance with the terms of the appropriation act. It was, and still is, the duty of the auditor to see that such expenditures are made in accordance with law. Through the power to investigate and to suspend or remove, there was established in the hands of the governor a sort of control which might extend to matters of finance. In Georgia, it was made the duty of the governor to examine quarterly the treasurer and comptroller-general and their books and papers. In many states, the governor has been charged with the duty of approving or rejecting the vouchers of various officers. Such supervision is directed toward determining the legality of expenditures and the fidelity of officials to their financial trust, rather than toward the wisdom of expenditures made. With the inadequate machinery of administration at his disposal, the governor's actions in this direction could amount to nothing more than a duplication of the work of the state auditor. The introduction of budget systems and the reorganization of state administration in a number of states opened the way to a more real control by the chief executive over finance. His power in preparing the budget and recommending specific items therein gave him a more constructive influence over appropriations than was secured merely through the veto. It was not until the reorganization of state administration in several states that an effective step was taken to establish a real executive control over expenditures. Power has been vested in the administration under some of these newer arrangements to examine in advance expenditures with respect not merely to their legality, but to their wisdom. Authority has been conferred to examine contracts for the object of determining whether they are properly made, and to inspect materials for the purpose of discovering whether or not they comply with specifications laid down. Likewise, results may be investigated to determine whether work has been efficiently performed and contracts carried out as entered into. This supervision, though exercised directly through the head of a finance department, places in the hands of the governor himself a very real and tangible control over the financial affairs of the state.

(d) Financial

(e) Police The police function is that of regulating the acts of persons and the use of property in the interests of the public safety, health, morals, and welfare. The historic method in English-speaking countries of exercising this function has been through officials locally elected. In the United States, the police, sheriffs, and prosecuting attorneys are the accustomed agencies through which the police power has been exercised. As has been already pointed out, the governor rarely has any control over such locally elected officers. In comparatively recent times, whenever police statutes have been enacted to deal with certain large subjects, such as health, factory conditions, housing, and fish and game preservation, special officers have been provided for their enforcement. Since these are usually state officers, the governor has gained a considerable control over their acts through the power to appoint and remove.

One purpose of a state militia is to serve as a police force on extraordinary occasions. Without specific organization the governor, under his general power to see that the laws are executed and as chief executive, has made use of the militia for police duty in times of great emergency due to fire, flood, tornado, or riot. On such occasions they have served a useful purpose in the absence of a better agency; but since they are composed of private citizens withdrawn temporarily from the usual callings of private life, and without police training, they are neither available for continuous service nor adapted to general police duties.

In recent years, the desirability of a permanently established and professionally trained police force with general powers of law enforcement throughout the state has become widely recognized in many parts of the country. The dwellers in the isolated country neighborhood and the banker in the crowded city street have both come to realize the inability of the local police to cope with criminal gangs operating with the aid of the automobile and under the protection of the automatic pistol. This need has led, in a few states, to the creation of a state police force organized upon a semi-military basis, and generally under the control of the governor. Thus the governor has, for the first time, been given adequate means under his own control of protecting citizens in their persons and property from violence. With an efficient state police at his disposal, and with an adequate control established over local police through the power of removal, the governor may in time be enabled in reality to "see that the laws are faithfully executed."

The legislative functions of the governor are those which he exercises when participating with the legislature in the determination

and formulation of the policies of the state. These functions are to call the legislature in special session, in some cases to adjourn it, to send messages to them at will, to approve or to veto acts, and to influence the course of legislative events by political means. The first four of these are secured through the grant of legal power set forth in the state constitution; the last is of extra-legal origin and is political in character.

Legislative
powers
of the
governor:

The governor is empowered in every state to call the legislature in special session whenever, in his discretion, the public interest demands it. In several states he may convene the Senate alone on "executive business" which includes the business of acting upon appointments or removals, or of considering questions of impeachment. Ordinarily the official initiative in calling a special session is taken by the governor himself; but in Virginia he is required to issue a call upon the request of two-thirds of the members of both houses, and in West Virginia, upon the application of three-fifths of the members. When annual sessions were the prevailing rule, the number of special sessions was not great; but with the biennial meetings prevailing, the number of special sessions has materially increased. At the present time, scarcely a year passes without such a session in at least one state. One effect of the prevailing lack of popular confidence in legislatures is a general aversion on the part of the public to special sessions. Objection is offered, too, on the score of expense. Consequently, governors are reluctant to call it together unless there is some widely felt and urgent need.

1. To call
special
sessions

In about half of the states, the legislature may, in special session, legislate upon no subjects other than those specified in the call, though in a few instances the governor is permitted to present additional subjects for consideration during the session. It was the lack of such a provision as the latter that caused the absurd situation in Illinois in 1912, of having two special sessions in progress simultaneously. After such a session had convened, it became desirable to consider some other matters not included in the original call. Whereupon, to make the consideration of these matters constitutional, a second call was sent out, and two sessions were set in motion at the same time.

In New York in 1913, the question was raised whether for this reason the action of the legislature in impeaching Governor Sulzer at a special session called for another purpose was valid. It was held by the courts that impeachment was a judicial and not a legislative matter, and so was not affected by this limitation.

The power to call a special session has occasionally been made use of by a governor to force upon the attention of an unwilling legislature some measure favored by him, and at the same time to give emphasis to the subject in order to create a public opinion in its support.

2. To adjourn the legislature

The power of dissolution of the legislature at will possessed by the colonial governor has disappeared; but in case of disagreement between the two houses as to the time of adjournment, the governor may adjourn them. In such a case, the time of adjournment must be not later than the date of assembling of the next regular session. In cases of emergency, such as at time of public danger, the governor may adjourn the legislature or call it in session at some other than the regular place of meeting.

3. To send messages:

In every state, the governor, by constitutional mandate or by custom, sends messages to the legislature. In many states he is directed to communicate by message "the condition of the state and recommend such measures as he may deem expedient." His messages may be said to be of three kinds: first, a formal opening message; second, special messages; third, the final or valedictory message upon retirement.

(a) Regular message

In general it may be said that the formal message delivered at the opening of the legislative session consists of two parts. First, it contains a general review of the state of public affairs, including any conditions, economic or social, which may affect the course of the public business or the public welfare. This presentation varies widely with the inclination and the character of the governor. It sometimes is a carefully prepared and businesslike survey of conditions in the state; at other times, it degenerates into a stump speech, rhetorical and platitudinous. Its second part consists of recommendations of various subjects for the consideration of the legislature and for possible enactment. As the governor has come to be looked to by everyone as a leader of the legislature, such recommendations have great significance, and attract a large measure of public interest. In the message are likely to be mentioned the various constructive measures advocated in the party platform, but especially those which the governor himself has adopted as his own personal platform in the campaign. Sometimes some of the latter are merely mentioned in the regular message, more comprehensive treatment being reserved for a special message later.

A feature of the better type of messages, especially in recent years, has been a discussion of the finances of the state. In several

states the governor is required to account to the legislature for money received and paid out under his authority. The accounting for this sometimes appears as a sort of appendix to the regular message. This requirement seems to be an outgrowth of the custom of placing at his disposal an "emergency fund" to be expended by him at his discretion for extraordinary purposes not to be anticipated by the legislature. Where the executive budget has been introduced, matters of finance are now reserved for presentation in the "budget message" at a later date in the session. This becomes, then, in effect a second regular message.

From time to time during the legislative session, the governor may send special messages. These may be suggested by some unforeseen circumstance, or, as has been suggested above, when some subject of paramount importance has been reserved from the regular message for more extensive discussion. Special messages frequently deal with topics which the governor has stressed in his campaign and upon which he has to a certain degree staked his official record. In such cases there is frequently at the same time introduced by a close supporter of the governor, a bill embodying the governor's policy on the subject, which thereupon takes on especial legislative importance as an "administration measure." Such special messages on administration measures were infrequent before the latter years of the nineteenth century, but are to-day very common.

(b) Special messages

In every state except North Carolina, the governor has the power of veto, though the occasions and the conditions on which it may be applied vary from state to state. Where the power to veto exists, every bill which passes the two houses must be presented to the governor. This requirement is usually, even when not specifically stated, construed to extend as well to joint resolutions, except such as relate to matters of legislative procedure, sending messages to a popular referendum and constitutional amendments.

4. To veto bills

Thus far, only the legal powers of the governor over legislation have been considered. In addition, he possesses political influence which, though not set down in formal statement, is quite as real and sometimes more effective than his legal powers. The governor does not, except in the case of the appropriation bill accompanying the budget, regularly introduce bills. It is, however, not uncommon, as has already been said, for some of the most important measures before the legislature to be presented by a spokesman of the governor, and to be known to have been prepared for the governor. These

5. Political influence in legislation

"administration bills," as has been indicated, occupy a prominent place in the course of legislation.

For the political purpose of securing support for a measure, the governor sometimes employs his legal powers of budget-making and veto as well as his power of appointment and removal. The use of these, or a hint of their possible use made as a skillful politician well knows how, are very powerful in winning support for the governor's measures. Added to these is the purely political influence which the governor exerts as a popular leader. Through speeches, interviews for the press, and conferences with local leaders, he can mould public opinion in favor of a measure to such an extent that legislators will hesitate to risk popular as well as executive disapproval by voting against it.

All of these powers and influences: message, appointment, threat of veto, and the various means of stirring public opinion, may be used with equal vigor and effect in opposition to any measure of which the governor disapproves.

The steady stream of people: legislators and citizens, which is constantly passing between the two houses and the executive chamber during the session, is an indication of the power which the governor exercises over legislation between the delivering of his message and the time when the bills reach his desk for approval or veto. This influence is sometimes deplored by writers as an encroachment by the executive on the province of the legislature. It is, however, but the natural result of a demand on the part of both the public and the members of the legislature for a leadership in policy-forming which, under our political system, no member of either house is in a position to assume.

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CHAPTER ELEVEN

ADMINISTRATIVE SYSTEM

THE second function performed by the executive branch of government is that of administration. This consists in carrying into effect the plans and policies determined upon by the legislative body and interpreted by the courts. Its mission is to carry out orders, and to furnish the policy-forming organs with that information derived from daily contacts and intimate knowledge which is necessary to the wise determination of policy. The work of administration is carried out under the supervision and direction of the executive authorities. If one seeks to distinguish further the executive from the administrative, it will be found that while the executive function partakes of the nature of policy-forming, and hence is political in character, the administrative does not, and is nonpolitical. Again, while the executive function is concerned with the state as a whole, and its general well-being, the administrative is concerned with specific activities for their own sake.

The
adminis-
trative
function

The mistake should not be made of attempting to distinguish between the two functions by saying that the executive exercises discretion while the administrative does not. The fact is, rather, that administrative officers also exercise discretion, but that it is directed, not to the question of what is to be done, but as to how it shall be done. Their discretion is not of such breadth and character that a policy laid down by the political organs of government can be seriously affected by it as to success or failure.

The executive branch of government in the early states was made up of the governor, in whom were vested the more strictly executive functions, and of certain officers of general administration. Both the titles and the functions of these officers of general administration—secretary, treasurer, and attorney—reveal their origin in the corporate nature of the colonies. Such “service” functions as were undertaken by government were performed by local officers with little or no supervision by the state. The idea that the state was to be employed in the rendering of a great variety of services for the promotion of the general welfare had not yet dawned upon the

Growth
of admin-
istration

public. Indeed, such an idea would have been contrary to the accepted political theories of that day. Government was thought of as a necessary evil, made necessary by the perverseness and wickedness of mankind, and to be restrained within as narrow bounds as possible. The more optimistic even looked forward to a day when governments should become altogether unnecessary.

The economic developments of the first half of the nineteenth century brought sweeping changes, social and material; and the Civil War found the country undergoing transition from a pioneer agricultural to an industrial society of increasing complexity. The new condition had already arrived along the northern Atlantic seaboard and was creeping over the mountains into the Ohio Valley. This change involved, among other things, a large growth of population which tended to concentrate in the towns. The new commerce and industry with the aggregations of capital involved brought new problems in their train. These changes and new problems bred, quite unconsciously, a new and broader view of the function of government. It was to government that the people turned more and more for aid in the solution of these vexing questions. So the range of state activities, at first so narrow, broadened with accelerated speed and by the end of the century had attained immense proportions. Relatively early a widespread interest in education developed which led, by the middle of the nineteenth century, to a state-organized system of common schools, at the head of which was a state superintendent or board of education. At first, criminals were confined in the jails and the insane were confined either with the criminals or kept in the local poorhouses with the other dependent classes. The need of segregation and specialized treatment of various delinquent and defective classes led to the establishment from time to time of an increasing number and variety of state institutions for these classes of the population. Illinois established its first penitentiary in 1827, New York created a board of prison commissioners in 1846, and the Massachusetts Board of Charities dates from 1863.

As surplus wealth accumulated, it was desirable to extend supervision over the private institutions, such as banks and insurance companies, to which the savings of the people were intrusted. New York began the supervision of banks in 1829, and Massachusetts, in 1855. In the course of time, corporate capital began to devote itself to supplying communities with services which are naturally monopolistic in character, such as transportation, water, gas, and, later, electricity in its various applications. When these corpora-

tions began to use their power oppressively, the authority of the state was invoked to extend a restraining hand in the form of railroad, corporation, and public utility commissions. Massachusetts created a railroad commission in 1869, and Illinois, in 1871.

Again, the new industrialism, with its creation of a class of workers in factories living among poor surroundings, brought into being problems of health and bodily safety which local authorities could not successfully solve. The agencies developed to solve the problems were state factory inspection bureaus, later developed into state departments of labor, and state boards of health. The Massachusetts Board of Health was created in 1869 and a board of labor statistics in the same year.

The construction of roads and canals early engaged the attention of the states, but the coming of the railroad and bad financial planning had brought disastrous results to these internal improvements in most cases. But in the twentieth century a new interest in internal improvements, brought about by the development of the automobile, is covering the states with a network of improved highways developed through state highway commissions.

This wide expansion of services demanded of the state, and the resulting machinery necessary for performing them, has called for a corresponding growth in the agencies devised to furnish the financial means of supporting them. Therefore, to assist in the management of financial affairs there was early placed beside the treasurer an auditor upon whose warrant alone the treasurer could pay out money. Next came a tax commission to supervise assessment and taxation. To these had been added in some states an examining authority to inspect the accounts of officers, of institutions, and of local authorities. Civil service commissions have been set up in several states to supplant the spoils system of recruiting state employees by the merit system. Economies in the buying of materials and supplies have been sought through the creation of purchasing departments. These and many other institutions have been created until a great administrative system has been built up and charged with manifold duties and with the collection and disbursement of millions of dollars of public funds.

Whatever the field of activity in which the state may be engaged for the promotion of the public welfare, the methods employed may be reduced to three: regulation, aid, and operation.

In the greater number of cases, the desired end is sought through the imposition of regulation upon individuals or groups to restrain

Methods
of admin-
istrative
action

anti-social practices such as the use of dangerous machinery, the sale of impure foods or the charging of unreasonable rates for the services of public utilities.

In other fields of activity, state aid is placed at the disposal of citizens to assist them in the prosecution of their business. Examples are the furnishing of scientific information to farmers and the combating of disease through supplying antitoxins. Aid to local government is given by subventions to local school authorities and to public libraries, as well as through engineering advice in the planning of highways and public buildings.

State operation is illustrated when the care of special classes of defectives and delinquents is assumed by the state, when higher education is supplied in normal schools and universities, and when a state police is established or a system of state highways is built and maintained.

Classifica-
tion of
adminis-
trative
agencies:

1. Ac-
cording to
nature
of the
function

For purposes of study, it is advisable to classify the multiplicity of offices, boards, and commissions which has been brought into existence, whether for purposes of regulation, aid, or operation. This may be done by grouping them, first, according to the nature of the function performed. Each of these groups may be subdivided according to the field of work in which it is engaged. Classified according to the nature of the function performed, administrative offices would be divided into those which perform functions of general administration and those which perform service functions.

The fact that some of these offices are prescribed in the constitution, filled by popular election, and sometimes distinguished as "executive" offices, while others are created by statute, filled by appointment, and called "administrative," has little significance and, as already suggested elsewhere, may be ignored.

The general administrative offices include in the first place those which, besides the governor and lieutenant governor, are necessary to the corporate existence of the state, *viz.*, a secretary of state and a treasurer. These officers are found in every state. The attorney-general, as the legal advisor of the state, and the auditor or comptroller, although less indispensable, belong in the same class of corporate officers. With the broadening of state activity, there have been added to these, on the financial side, a director of finance, a tax commissioner, a board of equalization, an examiner of accounts, and a sinking-fund commission. On the personnel side there have been created a civil service commission, and, to deal with materials, a purchasing and a printing department. In most states, there has

developed also an election or canvassing board to review the returns of elections and to announce the results. Not all of the above enumerated departments are, perhaps, to be found in any one state, nor is there uniformity as to the distribution of work among them. A common characteristic of these departments of general administration is that they are not primarily engaged in performing the services for which the state exists, but rather in maintaining the service departments, supplying them with the funds, men and materials which enable them to perform their appropriate services.

Of these officers of general administration, it will be convenient in this chapter to discuss in detail only the secretary of state, the attorney-general, the civil service commission, and the officials in charge of purchasing and printing. All the other officers in the general administrative group are concerned with matters of finance and have been already discussed in the earlier chapter on state finance.

In carrying on any undertaking, public or private, which involves the performance of many distinct lines of work and which employs a large number of persons, the problem of organization becomes one of considerable magnitude. In the government of a state, the legislative branch, with all its minor officers and employees, includes at most but a few hundred persons. They cooperate in performing a comparatively unified task which they complete within the space of a few weeks, usually in every alternate year. Likewise, the judicial department includes a relatively small group which performs a single, definite, and closely circumscribed function. Contrasted with this, the executive branch of the state government comprises a miscellaneous group whose number includes in most states literally thousands of persons. This small army is employed, not upon a single task, but in the performance of a range of functions almost as broad as the field of human activity itself. Its labors are not confined to a period of a few weeks or months in every second year, but go on through the whole circuit of the year, each day bringing its manifold tasks of administration. Under these circumstances, the problem of systematizing the work and organizing the personnel assumes an importance far greater than is true in the other coordinate branches of government.

A characteristic of the development of administrative machinery in the United States has been the general practice, whenever a new function was undertaken by the state, of intrusting its administration to a new officer or board independent of every agency already existing. This has been true even when there was already in existence a

Adminis-
trative
organiza-
tion

department performing work of a similar character. This is in striking contrast to the prevailing practice in the federal government where, until very recently, new activities have usually been assigned to departments already existing. The result in the states has been a bewildering array of disconnected offices, boards, and commissions, whose numbers have been found by recent investigators to run as high as sixty or eighty in the average state. In certain of the more populous and highly industrialized states, the number has risen well above a hundred. In New York these were found to be nearly two hundred, and in Massachusetts there were until recently even more than that number. Not only is the number of administrative agencies great, but there is no uniformity in the designation applied to them. The names "department" and "bureau" are those which are most common. For purposes of description and discussion, the generic term "department" may be used to apply to all.

Relation
of chief
executive
to heads
of depart-
ments

Unlike the situation in the executive branch of the federal government, the heads of the departments of the state administration are not brought together as a governor's cabinet. The relation of a cabinet to a chief executive can be maintained by department heads only when they are not only appointed and removed by the chief, but also are largely controlled by him in the use of their discretionary powers. In most of the states, this relation is made impossible by reason of the fundamental principle of decentralization upon which the whole administrative system has been built.

The experience of the colonies in the struggles with their governors planted in them the seeds of an active hostility to centralized authority, or to anything savoring of an administrative hierarchy. To characterize any proposed administrative arrangement as constituting a "centralization of power," has been to condemn it in the eyes of the legislature and of the public in general.

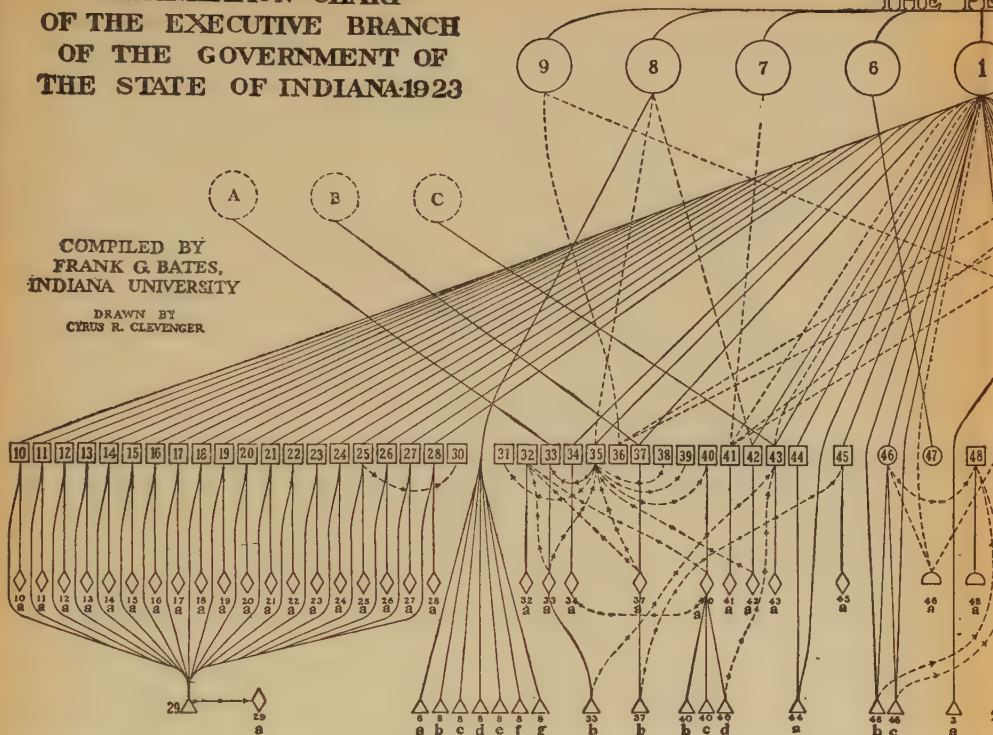
Moreover, one of the ends sought by adherents to the doctrine of the separation of powers has been, as expressed in the Massachusetts Bill of Rights of 1780, that this shall be "a government of laws and not of men." This means a government in which the legislative branch shall be supreme over the executive. In its application, it means that the statute creating an administrative agency should prescribe its organization, duties, powers, and procedure in such detail that little place will be left for the exercise of discretion by the chief executive, either in organizing the department or in directing the carrying out of its functions. Each officer is expected to look to the statute alone for direction and authority in the

ORGANIZATION CHART OF THE EXECUTIVE BRANCH OF THE GOVERNMENT OF THE STATE OF INDIANA 1923

THE PE

COMPILED BY
FRANK G. BATES,
INDIANA UNIVERSITY

DRAWN BY
CYRUS R. CLEVENGER



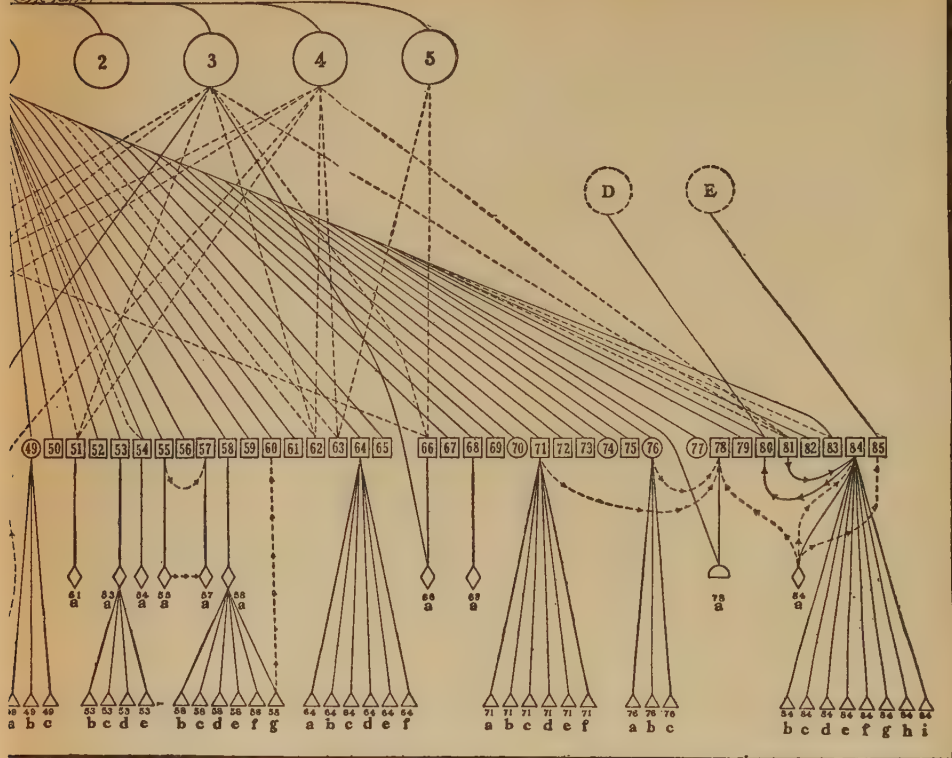
EXPLANATIONS

Large Circles at top of chart indicate officers elected by the people.
Circles of Broken Lines and Lettered indicate non-governmental organizations.
Squares indicate distinct administrative agencies in board form or governed by boards.
Small Circles indicate distinct administrative agencies with single individual head.
Triangles indicate subdivisions or subordinates of administrative agencies, established by law or by departmental regulation.
Diamonds indicate executive officers of boards and commissions.
Semi-circles indicate boards advisory or supplementary to the head of an administrative agency.
Full Lines are lines of appointment, and extend from the appointing officer to the person or persons appointed.
Dotted Lines indicate an ex-officio relationship.
Lines of appointment and ex-officio relationship should be read downward unless otherwise indicated. When the reading should be horizontal or upward the proper direction is indicated by arrow-points.

LET

1. Governor.
2. Lieutenant-Governor
3. Secretary of State.
 - 3a. Automobile Department.
4. Auditor.
5. Treasurer.
6. Supreme Court.
7. Reporter of the Supreme Court.
8. Superintendent of Public Instruction.
 - 8a. Division of Teacher Training.
 - 8b. Division of Elementary and High School Inspection.
 - 8c. Division of Licensing of Teachers.
 - 8d. Division of Vocational Education.
 - 8e. Division of School Attendance.
 - 8f. Division of Vocational Rehabilitation.
 - 8g. Division of Schoolhouse Planning.
9. Attorney-General.
10. Central Hospital for the Insane.
 - 10a. Superintendent.
11. Northern Hospital for the Insane.
 - 11a. Superintendent.
12. Southern Hospital for the Insane.
 - 12a. Superintendent.
13. Southeastern Hospital for the Insane.
 - 13a. Superintendent.
14. Eastern Hospital for the Insane.
 - 14a. Superintendent.
15. State Sanatorium.
 - 15a. Superintendent.
16. Boys' School.
 - 16a. Superintendent.
17. Girls' School.
 - 17a. Superintendent.
18. State Prison.
 - 18a. Warden.
19. Reformatory.
 - 19a. Superintendent.
20. Woman's Prison.
 - 20a. Superintendent.
21. State Farm.
 - 21a. Superintendent.
22. Village for Epileptics.
 - 22a. Superintendent.
23. School for the Deaf.
 - 23a. Superintendent.
24. Soldiers' and Sailors' Orphans' Home.
 - 24a. Superintendent.
25. School for the Blind.
 - 25a. Superintendent.
26. Soldiers' Home.
 - 26a. Superintendent.
27. School for Feeble-Minded Youth.
 - 27a. Superintendent.
28. Farm Colony for Feeble-Minded.
 - 28a. Superintendent.
29. Joint Purchasing Committee.
 - 29a. Secretary.
30. Board of Industrial Aid for the Blind.
 - 30a. Attendance Board.

32. Legislative Reference Bureau.
 - 32a. Director.
33. Indiana University.
 - 33a. President.
 - 33b. Director, Historical.
34. Public Library Commission.
 - 34a. Secretary.
35. Board of Education.
36. Board of Censorship.
37. Purdue University.
 - 37a. President.
 - 37b. Dean of Agriculture.
38. Teachers' Training Board.
39. Textbook Commission.
40. State Library.
 - 40a. Librarian.
 - 40b. Reference Department.
 - 40c. Catalogue Department.
 - 40d. Department of Information.
41. Board of Public Printing.
 - 41a. Clerk.
42. Normal School.
 - 42a. President.
43. Historical Commission.
 - 43a. Secretary.
44. Tax Commission.
 - 44a. Inheritance Tax.
45. Board of Agriculture.
 - 45a. Secretary.
46. State Examiner.
 - 46a. Board of Account.
 - 46b. Deputy Examiners.
 - 46c. Deputy Examiners.
47. Law Librarian.
48. Board of Certified Accountants.
 - 48a. Advisory Board.
49. Bank Department.
 - 49a. Building and Loan.
 - 49b. Loan and Credit.
50. Board of Pharmacy.



51. Board of Public Buildings and Property
 51a. Superintendent of Buildings.
 52. Trustees of Teachers' Retirement Fund.
 53. Highway Commission.
 53a. Director.
 53b. Auditing Division.
 53c. Construction Division.
 53d. Maintenance Division.
 53e. Motor Transport Division.
 54. Board of Charities.
 54a. Secretary.
 55. Live Stock Sanitary Board.
 55a. State Veterinarian.
 56. Board of Medical Examination and Registration.
 57. Veterinary Examination Board.
 57a. Secretary.
 58. Conservation Commission.
 58a. Director.
 58b. Division of Geology.
 58c. Division of Entomology.
 58d. Division of Lands and Waters.
 58e. Division of Fish and Game.
 58f. Division of Engineering.
 58g. Division of Forestry.
 59. Board of Optometry.
 60. Nancy Hanks Lincoln Burial-Ground Board.
 61. Board of Embalmers.
 62. Charter Board.
 63. Finance Board.
 64. Public Service Commission.
 64a. Division of Tariffs.
 64b. Division of Accounting.
 64c. Division of Railroad Inspection.
 64d. Division of Library.
 64e. Division of Service.
 64f. Division of Engineering.
 65. Voting Machine Commission.
 66. Securities Commission.
 66a. Securities Administrator.
 67. Board of Registration and Examination of Nurses.
 68. Battle Flag Commission.
 68a. Superintendent.

69. Advisory Juvenile Commission.
 70. Juvenile Probation Officer.
 71. Industrial Board.
 71a. Department of Compensation.
 71b. Department of Factory and Building Inspection.
 71c. Department of Boilers.
 71d. Department of Mines and Mining.
 71e. Department of Women and Children.
 71f. Department of Free Employment Service.
 72. Board of Control of Soldiers' and Sailors' Monuments.
 73. Board of Registration of Engineers.
 74. Insurance Department.
 75. Memorial Art Commission.
 76. Fire Marshal.
 76a. Aaron Division.
 76b. Inspection Division.
 76c. Legal Division.
 77. Adjutant-General.
 78. Administrative Building Council.
 78a. Advisory Council.
 79. World War Memorial Trustees.
 80. Board of Dental Examiners.
 81. Board of Appointment of the Board of Health.
 82. Board of Pardons.
 83. Election Commissioners.
 84. Board of Health.
 84a. Secretary.
 84b. Venereal Division.
 84c. Laboratory of Hygiene.
 84d. Infant and Child Hygiene Division.
 84e. Tuberculosis Division.
 84f. Statistical Division.
 84g. Housing Division.
 84h. Nursing Division.
 84i. School Hygiene Division.
 85. Anatomical Board.
 A. Alumni of Indiana University.
 B. Alumni of Purdue University.
 C. Indiana Historical Society.
 D. State Dental Association.
 E. Medical and Dental Schools.

performance of his duties. It is a principle of public law that every officer is held responsible for his acts to the law governing his office, rather than to a superior officer. With such fidelity has this idea been adhered to in the statutes creating state offices that organic relationship among departments, and between departmental officers and the chief executive has been discouraged. It is still a fact, as has been suggested when considering the governor, that though his express powers of removal and direction are limited, the chief executive does, through his power of budget-making, and through his political influence in legislation and in creating public opinion, exert a wide influence in administration.

There has resulted in state administration such a lack of coördination, overlapping of jurisdiction, duplication of effort, and confusion of authority as would in a short time bring disaster to any business corporation organized for profit. Though the governor is supposed to supervise the administration, the great number of separate agencies existing would make effective supervision impossible in practice even if authority were given him. In reality there has been no administrative head of the state. As a result has come lack of responsibility and its attendant inefficiency and waste.

It must be kept in mind that the conditions described above and what is said in the paragraphs immediately following, apply to the traditional situation which still prevails with respect to administrative organization in the great majority of the states. These characterizations and criticisms do not apply to the smaller number of states where there has recently been effected a general reorganization of the administrative system. These reorganizations will be considered in subsequent pages.

It has been seen that a considerable part of the time of the legislature is occupied with their work as a board of directors. Much of this work is in fact of an administrative character. It determines in detail the organization of the administrative machinery, prescribes minutely the processes of its operation, and freely indulges in the investigation of offices and the calling to account of administrative officers. It has thus made itself, rather than the chief executive, the real head of the administration. It is only in the states which have reorganized their administrative system, leaving to the governor large powers of direction and control, that this headship has been handed over to the chief executive.

With respect to their internal organization, some departments will be found to have single, and others plural, heads. In governments

Relation
of the
legislature
to the
adminis-
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ments

Internal
organiza-
tion of
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generally throughout the world, the single-headed type of organization prevails. It is universal in the countries of continental Europe and is familiar to us in the federal government at Washington. The plural head is found in certain departments in Great Britain and the British dominions, and in the so-called independent bureaus at Washington. Nowhere else is this form made use of to the same extent as in the American commonwealths.

Single or
plural
heads

The terms "board" and "commission" are both applied to plural department heads. Although some of them are by the statute creating them denominated "boards" and others "commissions," and although some writers have sought to distinguish between them, the two terms are practically synonymous.

In the states, the departments whose heads are elected by the people have usually single heads, although there are instances where plural heads are elected, such as the members of the railroad commission of Iowa, and the regents of the state university in Michigan. Whether an appointed head shall be single or plural seems to depend on a variety of circumstances. At first all administrative departments had single heads, but as administrative functions multiplied, the board form began to appear. At the present time, except where the administrative system has been recently reorganized, the plural form is the more frequent.

Reasons
for intro-
duction of
plural
heads

It must be remembered that, when the state governments were first organized, permanent administrative services by the executive branch of the government were practically unknown. Even the primary service of police protection was in the hands of local officers. The legislature was in the habit of making investigations of conditions through the agency of committees of its own members. Committees sometimes undertook specific pieces of work, such as the building of a state house or a prison; but since legislatures were transitory bodies, commissions composed of others than legislators were intrusted with such duties. When the specific work of construction was completed, the legislature thought of itself as being in charge of the administration of the institution or public work, and ordinarily created a commission to serve as its agent in performing the service. Among the earliest administrative commissions thus to be appointed were those to manage penal and charitable institutions. It was the logical proceeding that these commissions should be appointed by the legislature and that they should report to it. Somewhat later, as a part of the general transfer of the appointing power from the legislature to the governor, the connection of these

administrative boards with that officer was first established. It was even much later than this that the idea evolved that they should be parts of a unified administrative system.

A second reason for the adoption of the plural form for department heads was that the work performed in the administration of a state institution involves the management of physical property and the disbursement of considerable sums of money. In these respects, there was such a striking analogy to the work of private institutions managed by boards of trustees that control by a board seemed the obvious method for the state to employ.

Moreover, in the third place, there was present in the popular mind the dread of one-man power. There was always an evident unwillingness to intrust authority over persons and property to any one person.

Thus the custom of providing plural heads for departments became fixed and was perpetuated as new departments were established. Besides these advantages which were earlier discovered and which led to the adoption of the plural form, still others have been perceived as a result of experience. It has been found that, by means of an arrangement of overlapping terms and partial renewal each year, a desirable continuity of policy may be secured. This advantage of continuity in policy is especially desirable in the case of boards which manage public works or educational and charitable institutions. Again, it has been recognized that not all of the duties of certain departments are of a strictly administrative nature. In some cases the work is of a legislative kind involving the making of plans, the weighing of interests and the choice of means. At other times, there must be made decisions which are judicial in character, affecting private rights and involving the hearing and weighing of evidence. For these quasi-legislative and quasi-judicial purposes, the determinations of a group are felt to be more dependable than those of a single individual. Departments exercising extensive quasi-legislative functions are those of health and of labor. These prescribe extensive codes of rules having the force of law. Departments administering workmen's compensation and tax laws have important quasi-judicial functions. Finally, the continuing board has been resorted to in order to "take a department out of politics," that is, to avoid the evils of the spoils system. In such cases, the continuing board, which is sometimes made bipartisan by law, stands between the subordinate officials and the political effects of changes of administration. The board form, then, becomes a partial substi-

tute for a civil service law, As such, it has sometimes proved very successful in protecting scientific and professional interests in states where public opinion has not yet reached the stage under which a general civil service law could be enacted or enforced.

On the other hand, serious defects of plural heads have been pointed out.

Defects
of the
plural
heads

First, the work of most departments is chiefly administrative, and such work requires energy and promptness of decision which cannot be depended on from a board. Second, responsibility for specific acts cannot be located nor accountability enforced in case of a board. In the third place, the continuing character of a board may be a weakness when, in response to public demand, it becomes desirable to bring about a prompt change of policy in the department.

Again, it is objected that plural heads are uneconomical. If a board of several members is required to devote all their time to their duties, as is usually the case with a tax or public utilities commission, the system becomes expensive through the multiplication of salaries. On the other hand, if they meet only occasionally, as is usually the case with a state board of health, the real guidance of the work is left with a permanent subordinate, and the board itself is not sufficiently in touch with the work of the department to exercise actual and intelligent direction. In such cases, the real work is intrusted to a subordinate secretary or director who exerts the authority of a head without direct responsibility. This condition is especially true when, as is too often the case, the board is composed of the heads of other departments acting in an *ex officio* capacity with respect to the department in question, and devoting their major efforts elsewhere. It is no unusual situation to find the governor serving *ex officio* on from five to fifteen administrative boards, and to find associated with him in each case the auditor, treasurer, secretary of state, or other department heads whose time and energies are chiefly devoted to the performance of duties for which they were especially chosen. To secure the advantages of both single and plural heads, the plan has been worked out in some states of vesting responsibility for a department in a single head, but creating an advisory board which must be consulted by the head in quasi-legislative and quasi-judicial matters. This device has been employed with apparent advantage in some of the states whose administrative system has been recently reorganized.

The statutes creating administrative departments usually prescribe the internal organization of the department: that there shall be such

and such bureaus and subordinate officers, with such and such duties imposed. The effect of including these details is to give undue rigidity to the organization. It deprives the department head of the power so to reorganize and dispose his departmental forces as to adapt them to current needs and get from them the most efficient service. In some of the departments more recently created or reorganized, the department head is permitted a considerable degree of freedom to create, consolidate, or abolish bureaus and divisions at discretion but, generally, not to increase the personnel of the department.

Functions
of depart-
ment
heads:

The functions of the head of a state administrative department may be said to be those of appointment, removal, direction, and regulation.

The power to appoint all the officers and employees in the departmental service is commonly conferred on the head of the department, although sometimes the selection of some of the higher subordinate officers is vested in the governor. In the states where the merit system has been inaugurated under the supervision of a civil service commission, the freedom of department heads in this direction is circumscribed.

1. Ap-
pointment

The rule that the power to appoint does not carry with it the power of removal applies to department heads as it does to the governor. As a matter of fact, this power is generally specifically conferred by the statutes creating inferior departmental positions. It is as desirable that some degree of latitude in this direction should be permitted in order that a proper control should be maintained, as that some restraint should be imposed on the power to prevent its abuse. Whenever civil service laws exist, the power of removal, like that of appointment, is thereby much modified.

2. Re-
moval

The statutes defining the powers and imposing duties on departments and their officers usually are very detailed. This is in accordance with the idea already alluded to of making each officer responsible directly to the statute. The result is to make a large part of each officer's work purely ministerial in character. There must, however, always be some degree of discretion left to the department head with respect to when, in what manner, and to what extent, work shall be done. This implies that much of the head's time will be occupied in conferences with subordinates, in planning and in making observations with a view to securing desired results. The guidance exercised by a department head may take the form of directions or orders to some particular subordinate or with respect

3. Di-
rection

to some particular piece of work, or it may be embodied in rules addressed to subordinates for their general guidance. An example of the last mentioned guidance would be rules of office or field practice for employees. Some of these rules—such, for example, as those governing procedure in cases before a workmen's compensation commission or a public service commission—are addressed to the public as well, and must be observed by it in transacting business with the department.

4. Regulation

Although, as has been pointed out, the legislature is inclined to go into great detail in legislation, it has been found that that method makes for so great a rigidity where flexibility is desirable that it is impracticable to adhere absolutely to this practice. To remedy this defect there is a growing tendency on the part of legislatures, following the example of Congress, to specify in the statute merely the ends to be sought and some general directions, perhaps, as to the method of attaining them. The details of regulation are left to be worked out by the department head, who, guided by his own experience and technical knowledge or that of some subordinate, is able to work out regulations much more flexible and well fitted to complex and shifting conditions. Such rules and regulations, technically known in the books on political science as "ordinances," are binding upon the public and are enforced as law by the courts. Examples of these are the codes of industrial safety rules issued by the departments of labor in New York and Wisconsin. The Wisconsin law simply prescribes that the employer shall adopt methods, processes and appliances which are reasonably adequate for the safety and health of the employees. What is reasonably adequate in particular employments is left to be determined by the department and embodied in department rules which can be quickly modified to suit changing needs.

Administrative reorganization

It was not until the rising costs of government began, in the earlier years of the present century, to be felt seriously and widely, that the disorganized and inefficient condition of state administration attracted much attention. It was then perceived that the chaos existing was an important factor in the financial situation.

By the end of the first decade of the century the existing disintegration had been widely discussed unofficially, and since 1911 the subject has been one of official investigation in half of the states of the Union. Such investigations have been made by bodies bearing various names; but they have come to be spoken of in general as "efficiency and economy commissions."

The first such investigating commission was the board of public affairs of Wisconsin, created in 1911. The year 1913 saw bodies with a similar purpose created in New York, New Jersey, Massachusetts, Iowa, Illinois, Pennsylvania and Minnesota; and succeeding years witnessed the creation of similar bodies elsewhere. These commissions sometimes took the form of legislative committees, and sometimes they were composed wholly, or in part, of citizen members. The actual work of investigation has been done by political scientists from the universities, by private or semi-private investigating bureaus, or by firms of efficiency engineers. The scope of the inquiries has ranged from the financial irregularities of individual officials, or the organization of specific departments, on the one hand, to broad, comprehensive studies of the whole financial and administrative system of a state, on the other hand.

Though these commissions vary in their composition and functions, their findings and conclusions have nevertheless been of the same general tenor. They have disclosed a condition of disintegration of organization and of decentralization of power and responsibility, such as has been described in the preceding pages. The general situation everywhere was well described by the Illinois committee in their report on conditions in that state. They said: ¹

"Under the existing arrangements inefficiency and waste necessarily arise from the lack of correlation and coöperation in the work of different offices and institutions which are carrying out similar or closely related functions. There are separate boards for each of the state penitentiaries and reformatories and for each of the state normal schools. There are half a dozen boards dealing with agricultural interests and about a score of separate labor agencies, including four boards dealing with mining problems and eight free employment offices, each substantially independent of each other. State finance administration is distributed between a number of elective and appointive officials and boards without concentrated responsibility. The supervision of corporations and of banks, insurance companies and public utilities is exercised by a series of distinct departments. State control of public health is divided between various boards with no effective means of coördination. Nor is there any official authority for harmonizing the work of the numerous educational agencies."

¹ John M. Mathews, "Administrative Reorganization in Illinois," *National Municipal Review*, Vol. IX, No. 11 (Supplement), p. 742.

The effect of this situation with respect to efficiency and economy was well set forth in the same report:

"As a result of the absence of any systematic organization of related services, there is no effective supervision and control over the various state offices, boards and commissions. It is true that the great number of these are under the nominal supervision of the governor, through his power of appointment and removal. But the very number of separate offices makes impossible the exercise of any adequate control. To a very large extent each authority is left to determine its own action; conflict of authority between two or more offices is often possible; and if harmony and coöperation are secured it is by voluntary compromise rather than by the advice or decision of a superior authority. Under the present arrangements too many independent authorities have power to make expenditures subject to no effective centralized control or responsibility. This situation necessarily leads to waste and extravagance."

Recom-
menda-
tions

The recommendations of the several commissions which considered the problem in its larger aspects fall under three heads: the governor, the budget, and the administrative organization. The first and last may be further dealt with here, but the consideration of the second has been taken up in the chapter devoted to state finance.

Concerning, first, the head of the administration, it was felt that he should be relieved of a mass of routine duties including service as an *ex officio* member of various boards which served to absorb his time and to distract his attention from his true function, that of chief administrator. It was recommended that thus relieved, he be made the real head of the administration with complete powers of appointment, removal and direction of subordinates. A suggestion that the heads of departments be brought together as an administrative council or cabinet was included in some of the reports.

The commissions considered in greater detail the subject of the simplification of the administrative machinery. The general tenor of all suggestions in this direction was the same, varying only in detail. They provide for the consolidation of all administrative agencies into a few departments, bringing into each the hitherto unrelated activities in the field of that department. In each department, whenever practicable, there should be a single head instead of a board. Within the department the various lines of work should

be organized into bureaus or divisions with chiefs responsible to the head of the department. The model followed in making the recommendations was that of the federal executive departments and of modern business corporations.

Following the recommendations of the investigators only in part, some states, exemplified by New Jersey, contented themselves with reorganizing certain groups of related functions and consolidating them into larger departments, leaving the general administrative structure untouched. A considerable number of states, following the example of Illinois, have made a thorough reorganization of the whole administrative system. In some cases the results have been embodied in a single statute known as the "administrative code." If these new plans were made to include those offices provided for in the constitution it would involve the delays and uncertainties of constitutional amendment. Consequently, these have been excluded from the proposals, but with the hope that at some future time such amendments may be made to conform to the changes already instituted.

Reorgani-
zations
effected

Among the states which have inaugurated comprehensive reorganizations are Illinois in 1917; Idaho, Massachusetts and Nebraska in 1919; California, Ohio and Washington in 1921; Maryland in 1922; Pennsylvania, Tennessee and Vermont in 1923; and Minnesota and New York in 1925.

The general purpose of these reorganizations is well expressed in the Ohio administrative code which says: "In order that the governor may exercise the supreme executive power of the state vested in him by the constitution and adequately perform his constitutional duty to see that the laws are faithfully executed, the administrative functions of the state are organized as provided in this chapter."

The prevailing plan of organization under the newer systems is, perhaps, best typified in the earliest of these statutes, the Illinois administrative code. There are created nine departments: finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, trade and commerce, and registration and education. At the head of each department is placed a director appointed by the governor for four years with confirmation by the Senate. In each department is also an assistant director and certain other officers, some of them chiefs of bureaus or sub-divisions of the department. The subordinates provided for in the department of public works and buildings will serve to indicate the internal

Illinois
Adminis-
trative
Code .

composition of substantially all. In that department there are provided, besides the director and assistant director, a superintendent of highways, chief engineer of highways, supervising architect, supervising engineer, superintendent each of waterways, printing, purchases and supplies, and parks.

It will be observed that in order to secure definiteness of responsibility a single head is provided in each department, but that, since certain departments have duties of a judicial or legislative character, boards are retained to perform these functions. Examples of these are, in the department of finance, a tax commission; and in the department of trade and commerce, a public utilities commission. Besides these salaried boards there are provided nonsalaried and purely advisory boards attached to certain departments, designed to secure the benefits of the advice of groups of public-spirited and disinterested citizens. The civil service laws were made to apply to all the officers and employees of the departments except those specifically mentioned in the code and a private secretary for each department head.

It should be observed that the civil service commission, the national guard and the governing board of the state university, as well as the officers provided for in the constitution, are not included under the code.

The requirement of a flexibility great enough readily to meet changing needs makes it undesirable that the innovations made by the administrative codes should be embodied in constitutions. But there exists, at the same time, the danger that the fundamental purposes of reorganization may be impaired by ill-considered amendments to the codes. Already the legislature in 1925 amended the Illinois code by creating two new departments: of purchases and construction, and of conservation, to take over certain functions hitherto exercised by the departments of public works and buildings, and agriculture respectively.

Some of the general reorganizations effected have been less thorough-going than that in Illinois and have left more of the old independent agencies of government intact. They have, however, accepted the general principles of consolidation of related functions and of making the governor the real head of the state administration.

Having thus far in this chapter considered various aspects and problems of the administrative system as a whole, attention may now be directed to the nonfinancial officers of general administration.

The office of secretary of state may be said to have been inherited

by the original state governments from the corporate colonies. The secretary was at the outset secretary to the governor and to the legislature, and was custodian of the records of the state. He is in all but five states elected by the people by popular vote, and usually for the same term as the governor. The custom of popular election and the position of the office on the ballot just below that of the governor and lieutenant governor, have served to give to the office a position of exaggerated importance in the public mind.

The duties of the office, though miscellaneous and mainly of a ministerial character, are quite numerous. Some of these bear witness to the corporate origins of state government. In one state at least the secretary is still clerk of the upper house of the legislature. As the state's secretary he attests the signature of the governor and attaches the great seal to formal documents such as proclamations and commissions. He authenticates copies of acts and other records; he is custodian of the original acts of the legislature and publishes and distributes the printed laws, and he sometimes publishes also the reports of the various departments. He has certain duties in connection with elections which may include the issuing of election supplies, receiving and publishing the returns of elections, and serving *ex officio* on the state election board to canvass election returns and declare the results.

Secretary
of state

To these duties which may be classed as duties of general administration, have been added some of a service character. Certain of these are perhaps logical outgrowths of the original secretarial character of the office, while others have been assigned to him without logical reason. Because commissions and authenticated copies of legislative acts issued from his office, and because corporate charters were originally special acts of the legislature, it was appropriate that certificates of incorporation of domestic companies, and licenses to foreign corporations which have been admitted to do business in the state, should issue from the same office. Later it was but an extension of the same function to place in the hands of the secretary of state the enforcement of the so-called "blue-sky" laws regulating the sale of the securities of foreign corporations. In like manner, when automobiles came to be regulated through the issue of licenses and certificates of title, this was accomplished through the same licensing and certifying office. Still other and various minor functions have, in various states, been laid upon the secretary of state.

Every state has an attorney-general who is in all but five states elected by the people. In New Hampshire, New Jersey and Penn-

Attorney-
general

sylvania he is appointed by the governor; in Maine by the legislature, and in Tennessee by the judges of the supreme court. The attorney-general is the chief law officer of the state government, and as such his duties fall under two main heads.

As counsel for the state he acts as legal advisor to the executive and sometimes to the legislative branch of the government. Because the statutes defining the powers and duties of state officers are usually detailed and often complex or even obscure in meaning, these officers are especially dependent on his legal advice for the interpretation of these laws. The opinions of the attorney-general, though usually followed, cannot be pleaded in justification of unlawful acts performed by the officer in accordance with the opinion.

As chief attorney, the attorney-general represents the state in civil suits and defends state officers when sued in their official capacity. Prosecutions of those accused of violations of the criminal laws are ordinarily conducted through the local prosecuting attorney, but the attorney-general usually takes charge of such prosecutions if they are appealed to the higher courts. It is sometimes provided that on request of the local prosecutor, or even on his own initiative, if he becomes satisfied that the prosecutor is remiss in his duty, the attorney-general may undertake criminal prosecutions in the lower courts.

It becomes apparent, then, that the legal department of state government is in a highly decentralized condition. In the first place, the attorney-general has little or no control over the local prosecutors. Furthermore, the governor, although he is held responsible under the constitution for the faithful execution of the laws, has no power to direct or compel action by either the local prosecutor or the attorney-general upon whose activities prosecutions to enforce law must depend. It is highly desirable that the relations between the governor and heads of departments, on the one hand, and their legal counsel, on the other, should be marked by confidence and unity of purpose. Since, under the prevailing system of popular election, such relations are unlikely, it has been frequently urged that the attorney-general be made appointive by the governor.

As a result of the conditions just described there has sometimes been created the position of personal legal advisor to the governor. Important departments, too, sometimes employ their own special counsel. Thus the legal work is further decentralized. To prevent

to some degree this condition of decentralization, it has been provided in a few states by statute that all legal advice to state departments shall be furnished by the attorney-general only.

To carry on the many activities of state government there are required not only men but supplies and materials in large quantities. It has been estimated that at least one-half of the current expenses of state government are for these purposes. From the first it was the custom for each of the administrative departments to purchase its supplies independently of all others. State printing was early brought under a single control, and here and there certain state institutions combined for the purchase of supplies. Otherwise until the close of the nineteenth century there was an absence of centralized buying for the state. Supplies were bought in small quantities. Those in charge of purchasing had little or no technical knowledge of markets or of the quality of goods, and thus proper testing and standardizing was impracticable. As a result the highest retail prices were paid for goods of indifferent quality; waste from unwise or over-buying was common, and the way opened for graft and favoritism.

Purchasing
and
printing

The idea of purchasing through a single central purchasing agent was first applied in Chicago and Philadelphia about 1900, and Texas adopted the plan for its charitable institutions at about the same time. It was not until 1912 in Vermont that the practice was first adopted for all state buying, but since that year the plan has spread rapidly. By 1925 no less than twenty-four states had created central purchasing agencies for all branches of the state government; twelve more employed the system for certain groups of departments or institutions, and four others purchased certain commodities by this method. Thus but eight states were without some form of centralized purchasing.

Growth
of cen-
tralized
purchasing

To handle the work the trend seems to be toward the creation of a purchasing bureau in the department of finance or in some other large department. In some states an independent department has been created, and in still others the work has been placed upon a board, *ex officio* or otherwise. Whenever the plan is in use for less than the whole state government, it will usually be found applied to the charitable and correctional institutions; and when applied to certain commodities, it is usually to stationery and printing supplies.

The duties of a purchasing agency include the testing and standardizing of supplies, orders and contracts; advertising for bids;

Merits of
the
system

making contracts; storing goods; disposing of products of institutions, and gaining familiarity with markets and merchandise.

The outstanding advantages claimed for the system are these:

1. Large-scale buying, with consequent favorable prices.
2. Standardization of specifications and contract forms, making for economy and simplicity.
3. A staff of trained buyers having a technical knowledge of merchandise.

Where the system has been well organized and has been divorced from politics, it is said that as much as from ten to fifteen per cent has been cut from supply costs. In many states the products of certain of the state institutions are purchased by others or by departments, and in some cases the earnings of institutions constitute as much as five per cent of the total receipts of the state government.

Printing

State printing, at first taken care of by the secretary of state, had, during the nineteenth century, become in some states the prey of political contractors. In many states, as the amount of printing required grew steadily to large proportions, state printing boards were established. The duties of the printing board or other similar department are to prepare and let contracts, and supervise the work done in fulfillment of them, for the printing and binding of laws, journals, reports, legislative bills, letterheads, blanks, and other printed matter issued or required by the state government. In at least two states there are maintained state printing and binding plants.

Personnel

In earlier days, when the number of places in the state service to be filled was quite small, most places were filled by appointment. In such appointments, fitness to perform the work involved was a first consideration, though it is perhaps going too far to say that political considerations played no part whatever in determining selections. Once appointed, however, there was a prevailing belief that the incumbent had a vested interest in the position, at least so long as he performed his duties with fidelity. Since this was the case, political removals were not common.

Very early, notably in the states of New York and Pennsylvania, the idea of using public office or employment as a means of political reward made its appearance. Its spread throughout the country was rapid, and before the middle of the nineteenth century the spoils system had become widely adopted. The growth of this practice was accelerated by the prevalence of two ideas, outgrowths of

the crude conceptions of democracy prevailing at that time.

1. The over-emphasis of partisan struggles which grow out of the general agreement of the times that popular election is the only democratic means of selection of public officers. This led political leaders to seize upon office as a means of political inducement or reward.

2. The idea that not only was every citizen competent to hold any office, but that he should be given the opportunity to do so. This led to the belief in rapid rotation in office as an expression of equality and as a safeguard against the formation of an office-holding class.

So long as the duties of state administration were nontechnical the immediate effects of the spoils system were not seriously harmful; but it had the effect of creating an attitude on the part of the public toward public employment which was later to prove a serious obstacle to effective government. When, after the Civil War, the states began to be called upon to perform functions of a technical nature, calling for scientific or other specialized knowledge, and requiring large staffs of employees, the inherent evils of the system were revealed. It became apparent to observant persons that the system was most inefficient. Moreover, it was seen to be highly unfair, not only to the faithful employee, but to the taxpayer whose money was being used for the paying of political debts rather than for the rendering of public service. The public at large has been slow to understand this phase of the subject, and so steps to remedy the evil have been slow and halting.

In 1883, the year of the passage of the federal civil service act, the state of New York passed the first state law on the subject, and Massachusetts followed the next year. More than twenty years later, in 1905, Illinois and Wisconsin passed similar acts. Subsequently others followed until, in 1926, civil service laws applicable to state employees were in force in ten states. In more than three-fourths there has been as yet no general attempt to prevent by law the payment of political debts by the gift of public office at the expense of the taxpayer and of the public welfare.

In their general features the civil service laws resemble each other. They are administered, except in Maryland and Massachusetts, by a civil service commission, usually consisting of three persons, appointed by the governor and representing the two major parties. The bipartisan board was chosen as a means of removing the administration of the law from partisan influences, and of serving better the quasi-legislative and quasi-judicial functions of the depart-

ment. In Maryland and in Massachusetts the work is directed by a single commissioner.

The functions of the commission are primarily administrative and include preparing, holding and grading of tests, preparing lists of eligible persons, regulating promotions where the law covers this matter, and seeing that the laws and regulations governing the merit system are complied with. In addition the commission performs the important quasi-legislative duty of formulating rules governing classification, examination, certification, efficiency ratings, transfers, reinstatements, and promotions. Quasi-judicial functions are imposed on commissions in hearing appeals from classifications and ratings, and from the operations of the commission's rules generally. In certain states the commission hears appeals in cases of dismissals, and in at least one state has the power to reinstate those wrongfully dismissed.

Though similar in their general purpose and method, the laws vary in many particulars. Some, like those of Massachusetts, New York, New Jersey and Ohio, apply to local governments as well as state, while others apply to the state service only; some are very liberal in exemptions from the operation of the law, while others allow few exemptions; in some laws removals are easily accomplished, while elsewhere the process is difficult.

Subjects
covered
by the
civil serv-
ice laws:

Earlier laws had two main purposes: to prevent unqualified persons from entering the service, and to prevent removals for political reasons. More recent laws have taken on broader scope and the better statutes to-day cover four main phases of personnel work: selection, promotion, removal and retirement.

1. Selec-
tion

As a necessary preliminary to selection, positions in the public service are divided into classified and unclassified. Theoretically the unclassified should include, besides those chosen by popular election, all those appointive officers who perform policy-forming or political functions. This includes all those who by the use of their official discretion could seriously impair the successful carrying out of a policy with which they are not in sympathy. In practice the unclassified positions usually include those elected by the people, the more important places filled by executive appointment and others arbitrarily specified by law.

Classes:

The classified service is usually divided into exempt, competitive, noncompetitive and labor classes.

(a) Ex-
empt

The exempt class is likely to include a miscellaneous group of positions of relatively high rank which, though important, are not

connected with policy-forming, and which it is deemed impracticable to fill by any sort of formal test. It usually includes a deputy and a confidential secretary to the head of each administrative department and the secretary of each administrative board. Sometimes the teaching staff in each state institution of learning and the professional staff in public libraries supported by the state are exempted because these positions are likely to be filled through a merit system on a professional basis. Under certain systems the exempt positions are included under the group, "unclassified."

The competitive class, which includes the great majority of the positions in the state administrative service, embraces all the positions for which it is practicable to determine the fitness of applicants by competitive examination. Appointments to this class are made by promotion, transfer, or reinstatement, or from lists of eligibles prepared by the civil service commission after competitive tests. The tests are composed of oral and written examinations, tests of knowledge, and ability to solve problems naturally arising in the field of the particular service. These are supplemented by information concerning the previous experience and success of the applicant, and, in the case of applicants for the higher positions, personal interviews to determine personality, intelligence and adaptability to the work in question. The competitive class includes clerks, copyists, stenographers, accountants, skilled engineers, mechanics, chemists, and biologists, as well as others. (b) Competitive

The noncompetitive class includes a limited number of positions where, on account of the special character of the duties or of the training required, competitive tests cannot be relied on. In these positions special qualifying tests are applied. Special statisticians, investigators, and technicians are included. (c) Non-competitive

The labor class includes ordinary unskilled laborers. Vacancies are filled from lists of applicants registered by the commissions upon evidence of age, residence, physical ability, character, industry and experience. (d) Labor

Whenever a vacancy occurs in the competitive or labor class of positions, the civil service commission certifies to the appointing officer the names of those standing highest (usually the three highest) on the list of eligibles for the particular grade or service, and the appointing officer makes his choice from this list.

The more complete laws include provision that promotion shall be based upon grounds of merit to be ascertained by examination and previous success; but in practice, seniority and political influence 2. Promotion

have too often been allowed to outweigh the other considerations. The result is that ambitious persons do not enter the service, or, having entered, become discouraged and less efficient. Adequate provision for promotions involves the maintenance of a dependable system of efficiency ratings, a problem which has not yet been solved with entire satisfaction.

3. Removal

The older laws are content with forbidding removals for political reasons. Later laws have placed additional restrictions upon removal until there is now criticism, even from friends of the merit system, that the process has been made so difficult as to hamper the department head in controlling the work of his department. In most states the person removed has notice and opportunity to be heard in reply to charges. A copy of the charges must ordinarily be filed with the commission, and in Illinois appeal from the order of removal is heard by the commission and it may reinstate the person removed. In Massachusetts appeal is to the courts.

4. Retirement

No civil service system is complete without adequate provision for retirement of disabled or superannuated employees with suitable retiring allowances or pensions. Salaries in the state service are usually inadequate to permit employees to make provision for old age or permanent disability. The result is that without such provision there is a tendency, due to the soft-heartedness of department heads, for the service to become clogged with persons who are incapacitated for efficient service.

Pension funds have long been provided in some places for police, firemen and teachers; but it was not until 1921, when New Jersey passed such a law, that a retirement system was provided for a general state service. Under this law, employees at the age of sixty years, or earlier if incapacitated, receive an annuity from a fund created from contributions from those in the service supplemented by pensions supplied by the state. State-wide systems of retiring allowances have been inaugurated in nine states, and in at least three have been made to apply to all positions in the administrative service. Their adoption in this country is as yet of too recent date to justify general conclusions concerning their success. In North Carolina the law applies to judges' only, and in Utah it is restricted to firemen. In other countries retiring allowances have improved the morale of the public service and have increased efficiency by removing from the service the aged and the infirm.

Recent developments in civil service matters have been away from the negative function of preventing appointments and removals for

political reasons, toward the more positive ends of promoting the general efficiency of the service and the welfare of the employees, and removing injustice and inequality, thus seeking to make the service attractive to a higher quality of applicant and to offer greater incentives for the capable to remain in the employ of the state.

The problem has been approached through the process of standardization, which means, in short, providing equal pay for equal work. It involves a more careful and detailed classification of positions than has been made heretofore, fixing a uniform rate of pay for each grade of work, and the installation of a system of efficiency ratings as a basis for promotions. This development, which is in line with the advance in personnel work in the larger business concerns, has already been undertaken in several states and in a large number of cities with encouraging results, though there is yet much remaining to be worked out in this direction.

Instances of removals for political reasons are still to be found in the states having civil service laws, and the appointment of competent persons is not assured. But in spite of these facts conditions are much better than before the enactment of such laws, and the worst evils of the spoils system have been done away with. The perpetuation of spoils evils in states where laws are on the statute books is largely due to defective laws under which a good technique of enforcement has not been worked out, and to a failure of the public to demand rigorous enforcement. It is noticeable that in the field of education, where the harmful effects of the spoils system are brought directly into the home, a healthy sentiment has developed and there is comparatively little difficulty in maintaining the merit system. Teachers and city superintendents are, in the better communities, seldom appointed or removed for partisan political reasons. It seems not unreasonable to believe that under a good law a public opinion equally intelligent and alert might develop similar desirable conditions in every branch of public administration.

It has already been suggested that administrative departments may be grouped, first, according to the character of the work which they perform. Thus classified they may be said to be those of general administration and those of service. Applying a second and further principle of division, both the departments of general administration and those of service may also be classified according to the nature of their work. Applying this second test to the departments of general administration, it will appear from what has been said in this chap-

ter that they may be classified as being engaged in secretarial, legal, purchasing, personnel and financial work.

In the two chapters which follow, the more important service departments of state administration will be discussed, grouped roughly according to their kinds of work.

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CHAPTER TWELVE

ADMINISTRATIVE SERVICES

ALTHOUGH the variety of services now performed by the average state for its people is great, it is possible to group these activities into a few broad fields each having somewhat distinct characteristics. Realizing that lines cannot be drawn with exactness, and that such groupings made by different persons would not coincide at every point, it is, nevertheless, helpful to distinguish these several fields of state action. For convenience the following classification is adopted for the pages which follow: law-enforcement, health, charities and corrections, labor, education, business supervision, agriculture and conservation of natural resources.

It will be recalled that in the introductory paragraphs of the first chapter on the legislature it was stated that the law is "that body of rules and principles which prescribes the rights and duties of individuals in their relations with each other and with the government, which the courts recognize and enforce." It was there pointed out that our law in the American states is derived from two sources: the statutes enacted by legislative bodies, and the decisions rendered by the courts based upon judicial precedent.

It is the enforcement of the body of rules and principles which we know as "the law" with which we are at present concerned.

Enforcement of law dependent upon:

1. Character and opinion of the public

The effectiveness with which any law may be enforced depends upon the character and opinion of the public, upon the substance of the rule to be enforced, and upon the machinery of enforcement set up in the state. First of all, the character and opinions of the public have a powerful influence on the problem of enforcing the law. In rural communities law enforcement has not until quite recently presented a serious problem. The closer contacts between individuals, and the complexities of the social structure attendant upon the concentration of population in cities, make necessary there an extension of the field of public control over private action. Since in a heterogeneous population the impulses to law observance are weakened, the task of enforcing the law upon the statute books becomes under such circumstances one of greater difficulty.

2. Sub-
stance of
the law

The substance of the statute itself reacts upon public opinion to affect vitally the problems of enforcement. Indeed, the attitude of the public toward the substance of a particular law has what is virtually a determining influence on the practicability of its enforcement. If a law sets up standards of conduct which are approved by the public opinion of the community, and if those who do not approve are disposed to accept the will of the public and observe the law, enforcement presents no difficulty. The law against murder in most civilized communities receives the unquestioned support of virtually the whole community and hence its enforcement is relatively a simple matter.

But if, on the other hand, a law sets standards of conduct which are not approved by an overwhelming majority of the people, but which are definitely disapproved of by a considerable number of persons, then the problem of law enforcement becomes difficult, if not well-nigh impossible. Some of the more extreme Sunday observance laws now upon the statute books illustrate this situation. In certain states it is unlawful to sell anything on Sunday except medicines and cooked foods. In Massachusetts no public amusements except sacred, charity or open-air concerts are legal upon Sunday. Such laws, when not supported by the sentiments of a substantial majority of the public, are virtually impossible of enforcement.

The American people display an unbounded faith in legislation as a panacea for social ills. Whenever a group of citizens becomes convinced that an evil exists, the impulse is to seek to remove it through the enactment of law. Since this law is the result of no general public opinion or demand, the public is indifferent if not openly hostile to it, and its enforcement is therefore difficult, if not actually impracticable. The passage of such statutes setting new and stricter standards of conduct is justified by many persons as an educative force in the community; but whether this argument is valid under such circumstances is a matter of opinion upon which people differ. It should be clearly realized, however, that such a process of education involves very definite costs to society. In the first place it subjects the law-enforcing machinery to a serious strain which it may not be constituted to withstand, and in the second place, the spectacle of a law being ignored or openly flouted induces a disrespect for all law imperiling the whole fabric of law and order in the community.

Again, the effectiveness of law enforcement depends in large measure upon the machinery of enforcement set up in the state.

The process of law enforcement involves two stages. The first consists of the setting in motion and carrying out of the processes by which the infraction of law is brought before the courts. The second stage includes those proceedings which are had after the case reaches the hands of the court. The nature of the steps taken before the court and the conditions necessary to effective judicial action are considered in the chapter devoted to the judicial branch of government. Here may appropriately be considered only the first of these stages, *viz.*, that of initial steps in law enforcement.

When a particular violation of law involves the invasion of the private rights of a citizen, the injured party may be relied on to set the machinery of the law in motion. Sometimes, likewise, when it is a case of an offense against the public, a private citizen may take the initiative. This is illustrated by taxpayers' suits to restrain public officers from illegally paying out public money, or by suits for an injunction to restrain a public nuisance declared to be such by law. In these cases the courts act upon motion of the individual.

There exist in every state and in many local communities voluntary organizations of citizens, each formed to promote some particular phase of public welfare. These include such organizations as the Isaac Walton League which has among its objects the protection of fish and game; the National Consumers' League, which seeks to promote the welfare of women and children wage earners; and the Anti-Saloon League, which strives to secure the enforcement of laws against intoxicating liquors. Such organizations are active in setting in motion the appropriate agencies of law enforcement.

Many statutes of a regulatory nature are enforced through administrative agencies created especially for the particular purpose. State departments of banking, insurance, labor, public utilities and health, as well as some others, are charged with the duty of securing the enforcement of the law in their particular fields.

Notwithstanding the activities of individuals in this direction and the existence of special governmental agencies for setting in motion the machinery of the law, it still remains true that the great body of law established for the preservation of the safety of persons and property, the protection of the public morals, and the promotion of the public convenience is enforced by the general police officers, including the sheriff, the constable, and the police, supplemented by the action of the prosecutor. It is a well-known fact that it is in

3. Machinery of enforcement

Initiative in enforcement:

1. Individual citizens

2. Voluntary organizations

3. Special administrative agencies

4. General police

the enforcement of these laws of a general police nature that our governments, both state and local, have most conspicuously failed.

The traditions of local self-government which have prevailed in this country have demanded that law enforcement shall be left in the hands of officers of the locality chosen by the people themselves or by their immediate representatives. Consequently the creation of special state agencies to enforce regulatory laws has been watched with jealousy, and the creation of a state police strenuously opposed in many states by champions of "home rule."

Conflict
of state
and local
opinion

Much of the failure of law enforcement arises from conflicts between local and state-wide sentiment with respect to the particular subject involved. The police laws are, except for local ordinances passed by city councils, enacted by the legislature and embody its judgment of what is desirable for the welfare of the whole state. The local officers, sheriffs, police, prosecutors and courts, whose duty it is to enforce these laws, are then legally serving two masters, the state which enacts the law and the local community to which they owe their office. If it happens that a particular statute enacted by the legislature is not in accord with popular sentiment in the locality, the enforcing officers are placed in a dilemma. Shall they do their duty as agents of the state and enforce the statute or act in accordance with local sentiment and refrain from its enforcement?

Under such circumstances the decision is usually in favor of those to whom they owe their office and upon whose approval their continuance in office depends. The effect is a nullification of the particular statute so far as that community is concerned. Ordinarily such nullification arises from the failure on the part of the police authorities or the prosecutor to act; but in some instances even magistrates locally elected for brief terms have succumbed to the same local influences.

The legislatures themselves are responsible in no small degree for this condition of nonenforcement of law. The people of the whole state are interested in having certain laws uniformly and effectively administered throughout the state. The strict enforcement of statutes for the eradication of contagious disease is of great importance to every citizen for his own security. Public convenience demands that a uniform law governing weights and measures shall be strictly applied throughout the state. The inconvenience experienced by travelers due to the lack of uniformity in traffic regulation in different cities in the state is well known. Upon these and on many other subjects of general concern the legislature should enact

uniform laws. But, on the other hand, there are many matters of a purely local nature concerning which there is no need for a uniform rule, and upon which different localities have divergent needs and opinions. To insist upon uniformity in the law on such matters is to invite disregard of them in many communities. The situation is sometimes aggravated by the proneness of legislatures to enact statutes to satisfy the demands of small but insistent groups of citizens, even when the legislators believe when they place the acts upon the statute books that no serious effort will be made to enforce them.

In attempting to solve the unhealthy condition brought about by this dual but conflicting allegiance of local officials, several measures suggest themselves. Possible remedies:

In the first place, the legislature might refrain from enacting general laws which are obnoxious to a considerable number of communities, or it might make such laws optional, applying only to such localities as might formally adopt them. In the second place, if the general welfare demands the enactment of a law of state-wide application, then either a sufficient control over the local officers by the state administration should be established, or an adequate state law-enforcing machinery should be set up to supersede the locally selected officials for this purpose.

The constitutions of the states usually stipulate that the governor shall "see that the laws are faithfully executed," but in most states no adequate means have been provided him for performing this duty. When a sheriff, police officer or prosecutor fails to perform his duty, the governor has no means of compulsion, nor does he have the means of punishing the officer for his dereliction. In a few states only, including Massachusetts, New York and Ohio, the governor has the power to remove certain local law-enforcing officers under such circumstances.

This unfortunate lack of a state control is increased by the fact that the attorney-general, the state's chief prosecuting officer, has in most states little or no control over the local prosecutors. No state has attempted to create a department of justice comparable to that under the direction of the federal Attorney-General, although slight beginnings in that direction have been made in Louisiana, Idaho and Wyoming. These have not gone to the lengths necessary to insure an effective supervision of local law enforcement. A remedy for the existing lack of centralization might be secured, first, by placing in the hands of the governor the appointment of the

1. Fewer
or
optional
statutes

2. State
control
of local
officers

attorney-general; second, by making local prosecuting attorneys responsible to the attorney-general; and, third, the governor might be given the power, after hearing, to remove any sheriff, chief of police, or prosecutor for failure faithfully to perform his duty. Such changes from the existing system would give strength to the arm of the governor in performing his constitutional duty and give a sadly-needed higher tone to local law enforcement.

3. En-
force-
ment
by state
officers

An alternative to the system of relying upon local officers to enforce the state laws is that of undertaking their enforcement directly through the state's own officers. This is exactly what has been done in the case of certain subjects such as banking, public utilities, labor and some others, as already mentioned above.

General
police
agencies:

One of the oldest agencies of law enforcement is the state militia, which has now been consolidated into the militia of the United States. It is composed of all able-bodied male citizens, as well as such persons who have declared their intention of becoming citizens, between the ages of eighteen and forty-five years, save certain specified classes who are specifically exempted by law. The exempted classes include the executive and judicial officers of the United States and of the states, certain subordinate employees of the federal government, and mariners.

1. The
militia

The militia is divided into three classes: the national guard, the naval militia, and the unorganized militia. The national guard includes those members of the militia who are enlisted in organized units for drill and instruction for land service under the terms of the National Defense Act of 1916. The naval militia is made up of members of the militia similarly organized in training for service upon the high seas and the navigable waters of the United States. Only a small part of the militia, however, is thus organized and trained for service on land or sea. Besides these two comparatively small groups, all other members as defined above compose the unorganized militia, a body of men who are not regularly under militia instruction but who may in time of emergency be called out to augment the organized national guard. In time of peace, control is divided between the federal and state governments. All members of the militia, both organized and unorganized, may be called into the service of the United States whenever Congress shall have authorized the use of armed forces beyond the existing strength of the regular army. When "federalized," the militia comes entirely under the control of the federal government and becomes to all intents and purposes a part of the regular army. When the national

guard is not in the service of the United States, Congress still has control over its organization, arming, and discipline; but the states are entrusted with the duty of training it and of appointing its officers, subject to periodic inspection by officers of the regular army. The federal government supplies the uniforms and equipment, and gives to each state an annual grant-in-aid for the maintenance of the militia. The appointment of officers is usually vested by the legislature in the governor, although the qualifications and compensation of the officers are determined by the federal government.

In each state there is a military department of which the adjutant general, appointed by the governor, is the administrative head, subject to the authority of the governor as commander-in-chief.

When not engaged in the service of the United States, the national guard and even the unorganized militia may be employed by the governor to aid in the enforcement of state law. This the governor may ordinarily do upon his own initiative or upon the request of a sheriff, mayor, or other local officers. The national guard is not thus used for the routine work of law enforcement but only in case of emergency, when serious disturbances occur or when resistance to law on a large scale is present or threatened.

The militia is from its very nature unsuited to perform ordinary police duty. It is in a mobilized state only during a brief period in training camp each year, so that its use as a permanent police force is impracticable. Moreover, it is composed of citizens drawn from all walks of life whose chief interests are in civil rather than in military life. To withdraw them from their private affairs to perform frequent or long-continued military service would impose a hardship and create a greater unwillingness than now too often exists among citizens to enroll for military training. The policy of frequently calling out a group of private citizens to coerce another group of their neighbors tends to produce hostility among groups and inflames class prejudices. This is well illustrated when the militia is called out to perform police duty in cases of disorder accompanying labor disputes. The parties to the controversy resent the use of the militia, and the militia dislikes being called upon to perform a distasteful duty which they feel is outside that for which they enrolled. Contrary to popular impression, military authority is not suited to the preservation of order among civilians. The military method of dealing with disorder is through the ready use of arms, and the effect upon a group of rioters of a threatening show of arms is usually to incense them to violence. Thus the primary purpose

of the display is defeated. A small group of trained police without a display of arms is much more effective in quelling a spirit of mob violence than is a military force of much greater numbers.

2. State police

The need for some general state organization other than the militia to supplement local officers in the work of enforcing state laws has resulted in the establishment of a state police in several states. As early as 1865, Massachusetts created a general state police for the purpose of combating commercialized vice. In 1903 a small force was established in Connecticut with certain inspectional duties in addition to the enforcement of gambling and liquor laws. Neither of these forces was large enough to enable it to maintain daily state-wide patrol. Passing over certain temporary and special police, such as the Arizona Rangers of 1901, the first regular state police force in the United States was that of Pennsylvania which was established in 1905. This body, known as the "State Constabulary," was an innovation in the enforcement of state law in this country. They were organized on a scale sufficiently elaborate to admit of a daily state-wide patrol, and were made responsible to the governor alone. New York followed with a similar force in 1917, Michigan and West Virginia in 1919, New Jersey and Massachusetts in 1921, and Rhode Island in 1925. Not all of these states followed in detail the plan inaugurated by Pennsylvania, but in broad outline the system of that state was made the basis on which the police systems of the others were organized.

The superintendent of the state police is the outstanding administrative officer of the organization in New York, New Jersey, and Pennsylvania. He is appointed by the governor with the consent of the Senate, is responsible to the governor alone, and may be removed at the will of that officer. The superintendent has in these states complete control over the selection and work of the state police. This system is followed with slight modification in Texas and Massachusetts also. Connecticut, Michigan, and West Virginia substitute a board as the controlling authority. In Connecticut there is a board of three police commissioners who have full control over the appointment and work of the superintendent. These commissioners fix the details of the work, and the superintendent is merely a director employed to carry out the policy of the board. This system is so unsatisfactory that in Michigan a similar board has practically abdicated the full exercise of its powers and has given the superintendent the greatest leeway in his work. In most of the states having state police forces, a tradition has been estab-

lished in favor of retaining the administrative heads in office for much longer periods of time than is the practice in municipal systems. There has been very little partisanship in state police matters, and continuity of administrative control has not often been sacrificed to the desire for political spoils. A few of the states require practical police experience of the superintendent, but this is not true in all.

Heads of state police forces have often had military experience, though they have seldom been professional soldiers, and they have usually been efficient in their work. "They have introduced sound organization principles wherever consistent with statutory provisions; in several cases introduced a merit system free from both the machinations of the politicians and the meddling of the bureaucrat; consistently avoided political considerations; and enforced a sound discipline. Aptitude in handling men has been one of their primary qualifications."¹ Those now in command have usually come up through the ranks of the state police and have therefore a real appreciation of the problems encountered in the routine work of the men. The structure of the state police organization is usually very simple, and with few exceptions centralized administrative responsibility is the cardinal feature.

The functions of these forces are of statutory origin. In some of the states they are given general police authority and in addition are especially intrusted with the enforcement of the fire, fish, and game laws. Although in the majority of states special officers are detailed for the enforcement of this latter group of laws, Pennsylvania, New Jersey, New York, and West Virginia intrust the enforcement of these to the state police. The Rhode Island police confine their activities regularly to the rural districts and may not interfere to quell disturbances in cities unless requested to do so by the mayor or chief of police. A number of states utilize the state police for purposes of prohibition law enforcement and a few place the conduct of tests for motor licenses in their hands. Many states call upon them to aid other departments, as, for example, the health department to whom they are expected to report quarantine cases and to enforce the laws governing such cases. On the whole, experience has shown that these officers should not be burdened with functions other than those directly connected with general police duty.

Thus far sociologists have devoted little attention to rural crime, although its causes as well as its manifestations are not believed to

¹ SMITH, BRUCE, *The State Police*, p. 222.

differ widely from those appearing in cities. It is believed that through the activities and reports of an efficient system of state police more light may be shed on the various aspects of rural crime and that they may render valuable service in the general problem of crime prevention.

Besides their general duty to keep the peace and take into custody vagrants and criminals, the state police are generally expected to relieve cases of distress and to report cases of destitution and of minor delinquency. Their duties, already numerous, will doubtless be increased in various directions although, as has been suggested, it is a question to what extent they should be burdened with duties not of a strictly police nature.

Special
state
police

The development of the automobile and of systems of state highways has created new and troublesome police problems. In some states where no general state force exists, special highway police are found. Such a police force under the state highway department exists in Indiana and Washington. In these states the force does not possess general police powers, but their activities are confined to the patrol of the state highways for the purpose of enforcing the speed and other road laws, and to the recovery of stolen cars. In Maryland the highway police are sworn in as deputy sheriffs and are thereby invested with general police jurisdiction. Pennsylvania's highway police is under the control of the state police authorities. New York and New Jersey have each a highway police in addition to the general state police.

Public
health

One of the most important administrative services performed by governments in modern times is that connected with the subject of public health, which in the United States is divided between the federal, state, and local governments. At the time of the founding of state governments in the United States few public agencies of any kind existed for the protection and preservation of public health. Those few functions then performed by government in this direction were taken care of by the local units. Public health work, like education, highway building, and most of the other administrative services performed by state governments at present, was considered to be a matter of local concern and state participation in the administration of this service, as is also true of the others, did not take place until the middle of the last century. In 1797, Massachusetts passed a law providing for the creation of local boards of health and was followed by Connecticut in 1805. These two examples were followed but slowly, and at the opening of the Civil War

only seven states had made provision for local boards of health. The slight supervision or control which was exercised over the condition of the public health by any authority in the early days centered around the abatement of nuisances and the imposition of quarantines on contagious diseases. Private initiative was relied upon to a great extent to deal with the first of these, although public officers could and sometimes did take sporadic action in this direction. As a matter of fact, public health administration has been influenced even to the present time in its scope and methods by these two early phases of its activity. The terrible cholera epidemic of 1848 and 1849, followed by the yellow-fever epidemic of 1853, gave rise to a wave of popular interest in developing some measure of public control over major health problems, and particularly those connected with sanitation and the spread of infectious diseases. An exhaustive report made by a commission in Massachusetts after the cholera epidemic, and a continued agitation of the subject led to the creation in that state of a state board of health in 1869. Within a decade, no less than sixteen states had followed the lead of Massachusetts in the creation of such boards. The discovery that microscopic germs were the cause and carriers of disease opened the way for the development of a system of preventive medicine. As a result of the progress of knowledge in this field there has come about a revolution in the administration of public health in the several states. Although the cure of disease must continue to play an important part in the health activities of the state, the task with hopeful possibilities is that of disease prevention.

Develop-
ment of
state
activity

The magnitude of this task and the highly technical nature of the processes involved have proved too great for local governments to deal with effectively, and the natural result has been an increased exercise of state control of public health. The growth of state intervention in these matters has been accentuated in no small measure by the growth of large cities and their attendant problems of health protection.

The continually expanding scope of state activity in matters of public health has called into existence administrative boards and officials, until at the present time there is to be found in every state a commissioner of health or a board of health selected wholly or in part from the medical profession and appointed ordinarily by the governor. The oldest and the form of organization still most often adopted is that which consists of a board of health, made up of from three to ten members. The board, holding regular meet-

ings at stated intervals, is charged with the responsibility for carrying on the work of the department, and exercises the legislative function of enacting health regulations.

Stages in
adminis-
trative
develop-
ment:

1. Inves-
tigative
and
educative

The central health authorities from the standpoint of the scope of their functions may be said to have passed through two stages of development. The first stage is that of an investigative agency, with little, if any, regulative authority. Their contacts with local health authorities are slight, being confined almost exclusively to the functions of an advisory body. The making of investigations, the publication of periodic reports, and the carrying on of a campaign of public education in health matters constitute the activities of the department in this stage of development. The Massachusetts board illustrates this stage. It confines itself to investigative, informational, and non-regulative activities, save with respect to the regulation of epidemics and the preservation of the purity of water supplies, in which matters it exercises regulatory powers.

2. Regu-
latory

The second stage is marked by a very distinct expansion of the functions of central authority. Here, as in the preceding stage, the investigative and educative functions are performed, but to these are added very extensive regulatory powers.

In the first place, it is given authority to enforce, sometimes in a very summary way, all health laws and regulations.

In the second place, the department is frequently given broad powers to issue health rules and regulations which have the force of law. For the violation of these, individuals may be prosecuted to the same extent as for breach of acts of the legislature. There is great variety among the states which have reached this stage as to the scope of this power granted to the department. In some instances the power to issue regulations extends only to the subject of communicable diseases. In others the power is extended to cover all matters relating to the preservation and improvement of the public health not covered in detail by statutes. There is noticeable in a number of states, however, a tendency to enact these detailed regulations into statutes by the legislature, leaving less latitude for the issuing of departmental regulations. On the other hand, the more general tendency is to make broader the powers of health authorities in this respect. In a few states, especially in Minnesota and Louisiana, this tendency has proceeded so far that substantially all health administration is through regulations issued by the department of health.

In the third place, a certain degree of control over the local

administration of health is conferred. In these states the local health authorities are considered very definitely agents of the state department for the administration of both statutes and departmental regulations. To enforce this responsibility the department exercises supervision even to the extent of removing local health officers for incompetence or failure to perform their duty. In certain states the state board is authorized to issue rules governing the conduct of local health officers; in others, local health regulations must be approved by state boards; and in still others, when local authorities fail to enforce state regulations, the state officers may step in and enforce them at local expense.

The broad range of the powers thus granted in some states has led to the development of an elaborate departmental organization. In Indiana, there is under the direction of the board of health a secretary who is the general executive officer of the department, and the following administrative divisions which suggest the scope of the activities of the department: venereal disease, infant and child hygiene, tuberculosis, housing, school hygiene, nursing, and statistics, as well as a laboratory of hygiene. In New York, where there is at the head of the department a single commissioner, there is an elaborate organization, and a staff which includes a medical expert, registrar of vital statistics, directors of pathology and bacteriology, chemistry, engineering, and of the cancer laboratory.

Depart-
mental
organiza-
tion

In some states subsidies are granted to local units for carrying on health work, and where this is the policy the state is enabled to secure the enforcement of health standards by local authorities with much success. Although there is much diversity in organization and scope of functions among state departments of health, one cannot but be impressed by the breadth of their activities. Besides the functions carried on by the departments of health, other agencies of the state also frequently perform work of a similar character. In order to give a complete picture of the work in this field, it may be desirable to include their activities in the following general survey of health services which the state is to-day performing.

Public
health
functions:

A primary function performed by state health departments is that of investigation and experimentation. For these purposes elaborately equipped laboratories are maintained and scientists employed to discover the causes of disease and to devise means of combating and eliminating them. Also statistics are collected with respect to births, marriages, and deaths, as well as to the location, prevalence, and causes of disease and accidents. Since the latter

1. Investi-
gation

function touches occupational diseases and accidents and may involve the inspection of factories and other places of employment, it is sometimes performed in part by inspectors attached to the department of labor.

2. Quar-
antine

A second service performed by health officers, and the first in order of development, is that connected with the exclusion of persons afflicted by certain types of communicable diseases, or their detention in hospitals, or at home. The use of quarantine measures is of long standing and the supervision and enforcement of them is still one of the chief duties of health officers.

3. Pre-
ventive
medicine

The distribution of vaccines and the administration of the vaccination laws to be found in many states is in the hands of this department. Free vaccination is now provided for in a number of states and in an increasing number it is compulsory.

4. Free
medical
treatment

State hospitals are maintained for the care of sick persons unable to pay for the services of private hospitals. Tuberculosis and other sanatoria are operated and free dispensaries provided by many states. These are sometimes placed under the supervision of the state health authorities, although more commonly they are administered under the direction of the department of charities or in connection with state university medical schools.

5. Medi-
cal
examina-
tion of
school
children

The medical examination of school children is a service of comparatively recent origin, but it is growing with great rapidity both in extent and importance. The early detection and correction of various physical and mental defects in school children, especially in the lower grades of the elementary school, will, if continued over a long period of time, accomplish much toward the improvement of public health in general. Visiting inspectional officers are maintained in some states through coöperation with the educational authorities, state and local.

6. Care
of dead
bodies

The care and disposition of the bodies of deceased persons for whom no burial provisions have been made for one reason or another is usually under the control of health officers, and the same is true of the transportation of such bodies, if that be necessary.

7. Indus-
trial
accidents
and
disease

Although the prevention of accidents and the regulation of unhealthful occupations are matters of health conservation, it is customary to place the administration of these subjects in the labor departments of the several states. It is true, however, that information and public instruction with respect to them is included in the educational work of the health authorities.

An important group of protective activities of government includes

the enforcement of laws controlling building, sanitation and housing, although in most states the enforcement of laws for promoting sanitary conditions in factories, workshops and other places where workers are employed is given over to the department of labor. The inspection of public buildings with respect to sanitary conditions is not infrequently carried out by agents of the state health department. In certain instances, plans for school houses must be approved by the state health authorities before structures can be erected. Housing laws which have for their further object the securing of adequate light, ventilation and sanitary conveniences in places of human habitation are administered in most cases by state health authorities. These laws vary greatly in their scope, but in one state, at least, houses found to be unfit for habitation may be ordered pulled down by the health officers of the state.

8. Building and housing

Two closely allied problems are those of sewerage disposal and the purity of water supplies. The effective disposal of sewerage wastes and the providing of an ample supply of wholesome water are questions of vital importance in any community. Both these problems are primarily municipal in character, and so far as practicable they are left for local solution. There arise situations, however, which demand state action in these matters. Cities usually draw their water supply from sources outside their own boundaries, which are frequently rivers, lakes or the impounded waters of small streams, in each case drawing their waters from more or less extensive watersheds. To preserve over such areas conditions which shall insure wholesomeness of the supply is quite beyond the ability of the city itself.

9. Sewerage and water supply

The most natural as well as the most inexpensive method of disposing of sewerage is to discharge it into a convenient stream, in spite of the fact that it may endanger the health of the population along the banks. To preserve the health both of the consumers of water and of the residents along the stream, the state departments of health in most states have been given some measure of authority over water supply and drainage. In like manner the department of health bears the responsibility of protecting the health of those who are exposed to danger from a failure to make proper disposal of sewerage. In general it may be said that the inspection of watersheds and harbors, the making of tests for noxious substances in waters, the inspection of sewerage-disposal plans and systems, and the furnishing of technical advice in these matters are included in the functions of most departments of health.

The development in many states of extensive industrial areas with dense populations has injected into sanitary administration new complications. These areas are usually made up in each case of a number of distinct municipalities sometimes drawing their water supply from a common watershed, and desiring to discharge their waste into a common natural channel. In these situations state action is especially necessary to apportion supplies, to coördinate effort, or to prevent pollution.

10. Food
and drug
inspection

The states have evolved somewhat elaborate laws for the preservation of the purity of foods and drugs. The administration of such laws involves the inspection of stores, markets, restaurants, hotels, soft-drink dispensaries and any other places where foods and drinks are prepared or offered for sale. Supervision is likewise exercised over the sale of drugs and narcotics. The inspection of milk and of the sources of milk supply is usually placed in this department, although occasionally it is in the hands of the department of agriculture.

11. Ex-
plosives

Strict control is exercised in most states over the keeping and distribution of explosives through statutes and regulations governing their packing, labelling, storing, transportation and sale. The administration of these laws is not infrequently imposed upon health departments for lack of a more appropriate agency.

In every state, certain trades and professions involving the public health can be engaged in only after examination and certification by some state authority. Among these occupations are those of the physician, dentist, druggist, nurse, chiropodist, and embalmer. At the present time in most states, the examination, certification and licensing of such persons is in the hands of a separate board for each occupation, made up of representative practitioners in their respective callings. These boards are selected by the governor alone or in conjunction with the appropriate recognized voluntary professional organization in the state. There is a tendency in recent years to put an end to this condition of disintegration, and to concentrate this function in the board of health. A solution adopted in some instances is to provide that the tests of competency shall be given by professional examining boards who certify their findings to the state department of health, from which central body all licenses issue.

The ultimate solution of the problem of health protection cannot be secured by government action alone, but intelligent coöperation of the individual must also be assured to produce the desired results.

Consequently, perhaps the most fundamental of all the functions of health authorities is the education of the public in health matters. To instruct the people in the importance of personal and public hygiene and in the means by which it may be maintained, leaflets, posters, bulletins and reports are widely distributed and lectures are delivered. Lantern slides and films are supplied for instruction in schools and elsewhere. Much has been done in coöperation with the schools in instructing young people and, through them, their parents in the elementary principles of hygiene and disease prevention.

12. Public
instruc-
tion

In the paragraphs of the chapter upon the legislature referred to at the beginning of the present chapter, it was pointed out that not all legislative enactments embody principles of law, but that many are merely of a "directorial" character, determining the services which the state government shall undertake and the manner and means of their performance. It is now in order to consider the various permanent services which the people of the several states have called upon their governments to undertake, and the instrumentalities which have been set up for their performance. The care of those persons who are sometimes designated as the dependent, defective, and delinquent classes of society, commonly spoken of as the administration of charities and corrections, but sometimes more euphoniously spoken of as public welfare administration, constitutes at present one of the three largest objects of public expenditures in the American states. The idea that charity and correction are somehow connected is of long standing, and it is only within comparatively recent times that we have come to see that to be a recipient of public assistance is not necessarily a mark of delinquency and that the rendering by the state of special services to those who are defective in mind or body does not imply that such persons are objects of public charity. Beginning with the mere separation of the paupers from the criminals, the history of this branch of administration has been marked by a progressive differentiation of the various types of dependency and delinquency and the administering of special treatment to each type.

Charities
and
corrections

To-day our states have institutions for the poor, the sick, the insane, the feeble-minded, the orphan, the deaf, the dumb, the blind, the adult criminal and the juvenile delinquent. Moreover, some of these groups have been further differentiated so that there are separate institutions in some instances for the criminal insane, the epileptic, the tubercular, and for the confirmed criminal as dis-

tinguished from the first offender. By such segregation it is made possible to provide each group with the peculiar surroundings and treatment which modern science prescribes.

Develop-
ment of
public
relief

The nature of the problem of dependence and its treatment is determined by the particular stage of social development to which the community has attained. In primitive society, the relief of poverty was a problem of the family or the clan. At an early date the relief of distress through the bestowal of alms became the care of the church, and the monastic foundations became the great agencies for the dispensing of charity. The dissolution of the monasteries in England led to the imposition of that burden upon the parish. In the colonies poor-relief was administered in New England by the township and elsewhere by the county. It is still true, except for those persons removed to other institutions for specialized care or treatment, that the relief of poverty rests in the hands of the local governments. Even in cases where persons are cared for in special institutions, it is not uncommon for the local authorities of the place from which the individual is sent to be charged with a part or the whole of the cost of their maintenance. Exception to this occurs in certain instances when state almshouses are maintained for the care of those whose support under the laws of those states is not chargeable to any township or county. In a considerable number of states, institutions are maintained for the care of dependent children, and especially for those who are orphans of soldiers and sailors.

Relief of
special
classes

Outdoor
and
indoor
relief

Poor-relief is said to be either outdoor or indoor. Outdoor relief is that which, either in the form of money or supplies, is administered in the home of the recipient. Indoor relief, frequently referred to as institutional, is that administered in public institutions. On account of the greater economy and because the recipients are frequently in need of personal care, it has been customary to give institutional relief to all those who were permanently dependent, leaving outdoor relief to be administered only in cases of immediate and temporary need. More recently there has been a swing in the opposite direction. The development of the system of home-finding for orphaned dependent children, the introduction of a system of "mothers' pensions" in three-fourths of the states, and the introduction of old-age pensions in three states have all contributed to cut down the proportion of dependents who are receiving institutional care. These later developments in outdoor relief have served

in some measure to complicate the problem of administering the charitable work of the state.

During the first half of the nineteenth century it was common to find herded together in the poorhouses all classes of public dependents: the old and the young, the able-bodied and the diseased, the morally depraved with the virtuous, the mentally sound with the insane, the epileptic, and the idiot. The evils growing out of such conditions became intolerable in a civilized society and some measure of segregation was early demanded.

Segregation of classes of defectives and dependents:

One of the first steps taken was the segregation of the insane. While the harmless insane had been kept in the poorhouses, those whose insanity had assumed a violent form were thrown in jail. This disposition of such cases was at first due in part, no doubt, to the belief, not so long since current, that the insane person was possessed of a devil.

1. The insane

To give to each of those dependents in the ordinary poorhouse who was especially afflicted the care which his condition demanded was impracticable. In consequence, the state began to take over the care of such cases. When more enlightened counsels began to prevail, these unfortunates were sent to private institutions already established, to which state subsidies were thereupon granted. Although this practice is still followed with respect to certain classes of cases in a few states, the general custom has been to establish institutions maintained by the state.

As early as 1830 Massachusetts had an asylum for the insane where proper care could be afforded them and remedial treatment could be applied to curable cases. The alarming increase in mental diseases has made this the most numerous group of defectives in the care of the public. Every state has established at least one, and each of the more populous states now maintains several hospitals for the insane.

The demand for general hospital facilities, especially for persons living beyond easy access to those provided by cities, has resulted in a considerable number of states in the establishment of state hospitals for the general treatment of accidents and diseases. These are in some cases maintained in connection with a state school of medicine under the control of the state university. In certain cases the facilities of this kind are differentiated and special hospitals maintained for women and for children. Such excellence has been attained by many of these state hospitals for the treatment of diseases of both the body and the mind that they are freely resorted to by

2. Sick and injured

the well-to-do as well as by those who are unable to bear the cost of treatment elsewhere. In most of these institutions those who are financially able are expected to pay a fee, though those who cannot are treated free by the state or the cost charged to the locality from which they come.

3. The deaf, dumb, and blind

Other classes of unfortunates which early claimed the attention of the state were the deaf, the dumb, and the blind. The care of the state extended to these classes should not be considered as charity, although frequently so grouped officially. It is more properly thought of as a form of special education designed both for general culture and for vocational training. Early in the nineteenth century some of the New England states were providing for the education of the deaf, dumb, and blind in privately conducted institutions. Some of the states have continued at least until a very recent date, as in the case of the insane, to make provision in this manner. Most states however have established institutions for the education of these classes of defectives. The advancement of medical and psychological science has led to the establishment, likewise, of special institutions for the care and treatment of the feeble-minded, the epileptics, the inebriates, and the tubercular.

Development of public correction

Under the general name, corrections, is grouped the state's work of a penal and reformatory nature. At the close of the Revolution no less than eighteen crimes were punishable by death in Pennsylvania, and the degree of punishment meted out for lesser offenses was correspondingly severe. The sole object beyond that of safeguarding the public against further criminal activities of the prisoner was that of punishment. The end of the eighteenth century found all classes of criminals confined together in the jails of the country, without distinction as to whether they were old and confirmed criminals or young first offenders, or whether their offense was of a serious or more trivial nature. The prisons were almost without exception dark, filthy, and generally unsanitary. The confining of the violently insane along with other classes made conditions still more wretched.

Segregation of classes

Early in the nineteenth century through the activities of a few humanitarians, the public conscience was somewhat aroused and prison reforms were undertaken. The penal laws were made less barbarous and, one after another, most of the states took measures to improve their prisons. Those persons serving longer terms and for the more serious offenses were removed from the jails and placed in state prisons, and new and much improved types of prisons

were erected. Before the Civil War the segregation of various classes of misdemeanants had begun. The idea expressed by William Penn at the close of the seventeenth century that the reformation of the offender should be a chief purpose of imprisonment began to find practical application. Before 1850, Massachusetts had removed juvenile offenders from the demoralizing influence of jails and prisons and placed them in a "reform school" where the reformation and education of the inmates were the double purpose. In the decade following the Civil War, this movement bore fruit in most states and went one step farther in some through the establishment of separate institutions for boys and girls. The same idea of reformation through education and training in some useful trade was extended to the younger and less confirmed adult prisoners, and the year 1876 saw the first "state reformatory" in operation at Elmira, New York. Women's prisons, too, were established during the later decades of the nineteenth century in many states. In a considerable number of states, penal farms have been developed where prisoners convicted of minor offenses and serving short sentences are placed. Here they may live something approaching the normal life, working to some extent in the open air and, under some systems, earning wages which are applied to the support of their families. As a result of the system thus sketched, the jails in many states have become merely places of temporary detention for persons awaiting the action of the courts.

The problem of finding proper employment for state prisoners both for the purpose of promoting their physical welfare and of paying for their own support has been baffling. A solution formerly widespread was to lease the services of the prisoners to contractors who employed them either within or without the prison walls in various processes of manufacture. Attendant evils have led generally to its abandonment. In many places their labor is employed in the manufacture of goods either for sale in the open market or for use by the state in various departments and institutions. In some cases prisoners are employed at road-building and in at least one instance in mining coal. In certain of the more backward states prisoners clad in "prison stripes" and sometimes attached to a ball and chain may still be found working under the eye of an armed guard.

Employ-
ment of
prisoners

The emergence from the pioneer stage of civilization and the growth of industrialism led to a rapid increase in the number of those who became a charge upon the state. This increasing num-

Adminis-
tration of
charities
and
corrections

ber and the tendency to specialization of treatment combined to create a serious problem of administration. When the first of these state institutions for the dependent classes were established, there were already private institutions in the field performing a like service for the favored few. These were for the most part organized as corporations administered by boards of directors or trustees.

Systems
of admin-
istration:

The states seem to have adopted the suggestion presented by these private institutions, and as successive state institutions were established, each was placed under the control of a separate board of trustees. This plan seems to have been followed in the case of their earlier institutions by all except a few of the newer states, although it has since been abandoned by some. At the present time the states may be grouped in three classes with respect to the administration of state public-welfare institutions.

The first and oldest is the separate-board or Indiana type; the second, or board-of-control type, is frequently spoken of as the Iowa type. The third group possesses no single dominating characteristic but embodies features of and variations from the two distinctive types. The two first have been given the name of the state in which they were first successfully developed.

1. Indiana
type

In the states operating under the Indiana plan the individual institutions have each a separate board of trustees. Between these several boards there is no necessary and official connection whatever. The boards are composed of from four to nine public-spirited citizens who consent to give their services in this matter to the public without financial compensation save for their actual expenses. They are usually appointed by the governor and serve for periods of from four to six years. The terms of the several members expire in different years so that a continuity of policy is secured. Since the positions are without salary they offer no attraction to the spoilsman; but citizens of a high type have always been found willing to give their services to the state. Thus constituted, the boards are responsible for the management of the physical property of the institutions, for the purchase of supplies and the disposal of the products of the institution, if any, and for the care of the inmates. Retaining financial matters and the formulation of policies in their own hands, the administration of the institution is vested by them in a superintendent. This officer possesses professional knowledge and training in the particular field of welfare work involved and is in immediate charge of the care and treatment of the inmates.

Local
boards

A second characteristic of the Indiana system is the existence of

a state board of charities in addition to the boards of trustees of the several institutions. The first state board of charities, created in Massachusetts in 1863, was the earliest attempt of any state to exercise a central supervision over the various institutions of a charitable or correctional nature which had been springing up during the previous half century. This type of centralized oversight was widely adopted during the latter part of the nineteenth century and is still employed in about one-third of the states.

Board of
charities

The duties of these boards vary from state to state. In general they are to investigate the whole system of public charities and the correctional institutions of the state, both state and local; to prescribe forms of reports for the purpose of securing comparable statistics; to inspect existing institutions both as to the management of the physical plant and the care of the inmates, and to make reports and recommendations of desirable legislation to the legislature. They usually have similar authority over local institutions and over the administration of outdoor relief. They supervise private charitable institutions receiving state aid, pass upon the fitness of private institutions for the care of children and the aged, and of maternity hospitals and approve plans of local jails. It will be observed that the work of these boards in the main is supervisory, critical and advisory rather than administrative. It was felt by the originators of the plan that to confer on these boards mandatory power would bring them into conflict with the local boards of trustees and hence impair their usefulness as advisory bodies; and investigation shows that such administrative functions as they now possess are of recent origin. The boards of charities are intended as a means of contributing to these services of the state the element of humanitarianism and to bring the system in touch with the best sociological and penological thought and practice. Not a small element in their work is that of educating the public through bulletins, conferences, and public meetings. These state boards fall within that class of administrative bodies which meet only occasionally. Their activities, both supervisory and administrative, center about the secretary of the board. This officer, devoting his full time to the service, has been in some instances a person of high attainments in both the theoretical and the practical aspects of charities and penology.

The second or Iowa type of organization is a later development than the Indiana plan and presents a sharp contrast to it. Under this system which was first adopted in Iowa, the various institu-

2. Iowa
typeBoard of
control

tions are under the immediate care of a superintendent whose position is not unlike that of the superintendent under the Indiana system. There is, however, no separate board of trustees for each institution, nor is there a state board of charities. Instead there stands at the head of the system a single board, commonly called the board of control or board of administration, which combines the functions of both the separate institutional boards and the central board of charities. This body has full authority over all the institutions with respect both to financial management and the care of the inmates.

The board usually, like the board of charities, exercises some degree of supervision over county and private institutions and over the whole system of charity in the state. The members of the board of control, usually three in number, are appointed by the governor, but unlike the members of the board of charities, devote their whole time to the duties of the office. While in the case of the board of charities the emphasis is placed on their investigative and welfare activities, especially with respect to the care of inmates, in the case of the board of control the emphasis has been placed more especially upon the financial administration of the institutions. It appears that members of the boards of control have been selected on account of their business attainments rather than for their knowledge of charities and penology. The number of states employing the Iowa system was for many years about equal to the number under the Indiana form, but in recent years the proportion has increased materially.

3. Mixed
types

The third group of states, as has been said, cannot be placed in either of the classes just described, although they display features of both systems. In a number of states there are two or more boards of the general character of boards of control, each having the management of a group of institutions. When thus divided, they are likely to be severally assigned to the fields of charitable institutions, institutions for the insane, and those which are primarily correctional. In some states certain institutions have separate boards of trustees, while others are grouped as above described. In another group of states there exist both a board of charities and a board of control, and in a few cases a single commissioner has replaced the board of control. There exists equal diversity in the scope of the powers of these various authorities and in the distribution of functions between them.

The advocates of the Indiana and the Iowa plans of adminis-

tration engaged for years in heated arguments as to the relative merits of the two forms. The advocates of the boards of charities have characterized that body as: "A balance wheel to steady the motion of the charitable machinery of the state," and have explained that its proper office is "to promote the wise founding and the safe running of public charities, to correct and prevent abuses, to check extravagance, to promote economy, and to rebuke niggardliness." They have been convinced that in the case of the boards of control, the zeal for business efficiency has overshadowed the human interest in the welfare of the inmates.

Merits of
the dis-
tinctive
types

On the other hand, the supporters of boards of control have urged that the principle of centralization of authority with its possibilities of economy and efficiency should be applied to state institutions, and that boards selected with a view to these ends could at the same time exert all the beneficent influences attributed to boards of charities. The expedient of establishing two boards, sometimes referred to as the "dual" plan, has been worked out in a few states, notably in Illinois before the recent reorganization of administration, with the avowed object of combining the merits of the two systems.

Despite the changed rôle which the state now plays in the work of charities, the problem of its relation to private institutions and to organized private charities still presents its difficulties. In a considerable number of states public funds are granted to private institutions which are doing work elsewhere performed by the state. Since many such institutions are under church control, unfortunate rivalries and prejudices have sometimes been aroused which have reacted unfavorably upon the whole system of charities. The measure of supervision to be exercised over such institutions and over those having custody of helpless persons, either children or the aged, have also proved to be vexatious questions.

Relation
of state
to private
institu-
tions

During the greater part of the nineteenth century, the economic doctrine of *laissez faire* pervaded the field of industrial relations in the United States. With the growth of industrialism in the last half of the century, it came to pass that a very considerable proportion of the inhabitants of many states spent a goodly proportion of their waking hours within the walls of industrial and commercial establishments. Under these circumstances the physical conditions under which so large a number of citizens worked and the relations which existed between them and their employers, were subjects to which the general public could not remain indifferent. In spite of the prevailing individualism, from time to time specific in-

Industrial
relations

dustrial evils became the subject of ameliorative and regulatory legislation, until at present there exists in practically every state a large body of law on the subject and an organization, more or less elaborate, for its enforcement.

Develop-
ment of
labor
legislation

A marked characteristic of the so-called "labor laws" of the states is their unsymmetrical development and their heterogeneous as well as fragmentary character. This applies not only to the substantive provisions of the laws but to the means provided for their enforcement. This situation grows from the fact that the laws as they stand to-day are monuments marking the successive steps in advance made by a developing social conscience against the stubborn resistance of a strongly intrenched individualism.

Scope of
legislation

Statutes in the field of labor to-day include such subjects as collective bargaining; arbitration of disputes; safety, comfort, and health of workers; hours of labor; special safeguards for women and children in industry; minimum wages; industrial diseases; and workmen's compensation. There is at present widespread agitation for statutory action upon both health and old-age insurance comparable with that in force in European countries.

1. Safety,
comfort
and
health

The first labor laws in point of time were those statutes enacted to promote the safety, health, and comfort of workers in factories. Early laws seeking this end attempted to safeguard dangerous machinery, elevator shafts and stairways; to require adequate light and air, and to eliminate noxious gases, fumes, dust, and filth. Later acts to promote the comfort of employees required the employer to furnish suitable toilets, wash rooms, lunch rooms and adequate lunch periods, wholesome drinking water and, where practicable, seats for workers. These laws, commonly spoken of as factory acts, were later extended to apply to department stores and other places of employment. In like manner laws have been enacted to secure the protection of workers in hazardous employments. Included among these are acts applying to mining, to afford protection from falling rock, to secure ventilation, the proper equipment and operation of hoists, the use of safety lamps, and the storing and use of explosives. In the field of railroad operation, laws have been placed on the books to protect both the employee and the public through the use of safety devices such as air brakes, automatic couplers and signals, tests for eyesight and color-blindness, and of standard construction for cabooses, baggage cars, and coaches. In building construction statutes require temporary floors during building operations, railings upon scaffolds and safeguards for hoisting apparatus.

A storm center in labor legislation has been the struggle to secure regulation of hours of labor. Public sentiment first crystallized just before the Civil War in a few very inadequate acts for the limitation of hours of labor of children and women. The statutes upon this subject which are now in force in practically every state are both varied and complicated. The immediate goal of a maximum eight-hour day for women and children has been reached, at least for certain employments, in about half the states. Limitation of hours of labor for men has advanced more slowly and has, except in Oregon, been restricted to a few hazardous employments. Limitations upon child labor are closely articulated with school attendance laws. Additional legal protection is given to children with respect to employments dangerous to morals, women at the period of childbirth, and to both children and women with respect to night work and dangerous employments.

2. Hours
of labor

The statutes pertaining to safety, comfort, health, hours of labor, and those just mentioned relating to women and children are essentially regulatory in their nature. As was the case in other fields of regulatory legislation, the first administrative agencies created dealing with labor were authorized merely to gather and publish statistics. In the case of factory acts, as with respect to other laws of this character, no enforcement could be expected until a special authority was created for the purpose. In 1867 Massachusetts provided for factory inspectors who were to observe the working of these numerous acts and to secure prosecution of offenders. The example of that state has since been generally followed so that there is some agency in every state whose duty it is to enforce the factory acts.

The application of other statutes falling under the general head of labor laws involves the exercise of judicial as well as of administrative functions. A desire to avoid the suffering and economic loss entailed by strikes led to the enactment of statutes for the arbitration of industrial disputes. This essentially judicial function was in most cases conferred upon independent boards of "industrial conciliation and arbitration."

3. Indus-
trial
disputes

A second field of labor legislation demanding in its administration the exercise of a function judicial in its nature, is that of minimum wages for women and children. Such laws exist in a few states only. Boards have been established separately or within the existing departments in several states to study wages and living conditions, and on the basis of such studies to fix minimum wages under the guidance of the general principles enunciated in the legislative

4. Mini-
mum
wage

act authorizing this. Legislation of this character has been vigorously opposed, wherever proposed, by those who fear that there will follow a reduction of the wage level, that workers will be discharged, or that legitimate business will suffer; but experience seems not to have justified these fears. In certain instances the statutes have been so carelessly drawn as to result in their being declared unconstitutional.

5. Work-
men's
compen-
sation

The most significant and far-reaching change that has occurred in the relations between employer and employees is that concerning liability for industrial accidents. At common law, if an employee was injured in the course of his employment it was difficult for him to secure damages to compensate him for his injuries. He might sue his employer, but the delays incident to court procedure were disheartening, and the costs of trial were excessive.

Moreover, the employer could escape liability if he could show any one of three states of facts to have existed: first, that the injured party had in any way contributed to the accident by his own negligence; second, that the injury was one incident to the nature of the particular employment; or, third, that a fellow employee was responsible for the injury. The injustice of this situation became so great and so apparent that these "common law defenses" have generally been abolished or modified, and in most of the states a system of "workmen's compensation" has been substituted. The first comprehensive statute of this nature to be enacted was that of New York in 1910. Workmen's compensation statutes proceed upon the theory that industrial accidents and diseases, like the depreciation of the plant, should be a charge upon the industry. Hence, financial compensation to the injured must be paid by the employer irrespective of fault, and the outlay charged to the cost of production. The administration of these statutes involves the determining of the validity of claims for compensation. This is accomplished through the holding of hearings at which both the injured person and the employer may appear, and, if compensation is found due, the making of an award according to a scale prescribed by the statute. These proceedings are of a distinctly judicial character, and in a few states compensation cases are heard and determined by the courts. In the greater number of states, however, a workmen's compensation commission of from three to five members has been created to perform this function. By the introduction of the compensation system administered by an administrative board, the injured workman is assured of securing his just award without delay

Work-
men's
compen-
sation
commis-
sion

and expense, and the employer is spared the the cost of excessive recoveries at the hands of sympathetic juries. In a few instances not only is compensation awarded by the state, but it provides for training in new vocations those who are incapacitated for work at their accustomed occupation.

In accordance with the earlier practice already alluded to above of descending to minute details in regulatory legislation, the legislature in formulating factory acts attempted to enumerate specific danger points and hazards to be protected, and the exact safeguards and conditions to be maintained. It is usually true, however, that the legislature is not in possession of the facts to enable it intelligently to formulate a proper act of such detailed character. There existed the constant peril of omitting mention of some danger or precaution of vital consequence to safety or health. Of late years, the legislatures in a number of states are contenting themselves with merely setting up the general standard of reasonableness with respect to safety and health. The administrative authorities are then empowered to ascertain and to prescribe by departmental regulation the particular devices and safeguards which are best calculated, under different conditions and in various industries, to attain the ends of reasonableness demanded by the statute. Details thus embodied in regulation are flexible and can be modified quickly to meet new situations.

By this means there has been imposed upon labor authorities functions of a distinctly legislative character. In a number of states, notably in Wisconsin and New York, there has grown up an extensive "industrial code" issued to supplement the very general terms of the statute, and having full force of law.

6. Industrial codes

Thus it will be found that as a rule there grew up side by side some or all of these independent agencies of administration: a bureau of labor statistics, a factory inspection bureau, a workmen's compensation commission, and a free employment bureau. In some states there was also a bureau of mines and in a very few a minimum wage commission. Following the tendency toward the integration of related activities, a considerable number of states have combined these agencies into a single department of labor. In some instances, as, for example, in Wisconsin, there is provided a plural head for the department under the name of the "industrial commission." This body administers the compensation law and frames safety regulations, leaving the work of inspection and the enforcement of laws to various subordinate bureaus. In certain other in-

Administrative organization

stances, as in Pennsylvania and Illinois, there is a single commissioner or director who is the responsible head of the department and in immediate charge of the regulatory activities. The administration of the workmen's compensation law in each of the two states mentioned is vested in a board subordinated to the administrative head of the department. In Pennsylvania there is provided a second board whose function is to suggest and to approve or disapprove regulations having the force of law issued by the department. By the form of organization exemplified in Pennsylvania and Illinois, it is hoped to combine the advantages of prompt action and definite location of responsibility in administration, with those of deliberation in matters which are legislative or judicial in their nature.

CHAPTER THIRTEEN

ADMINISTRATIVE SERVICES (*Continued*)

THE maintenance of public education is to-day of all the functions of government the one which receives the most whole-hearted approval from all classes of society. Education

No more interesting illustration of the gradual change of opinion on the part of the public with respect to the proper functions of government can be found than in connection with the subject of education in the United States. During most of the colonial period there was no general recognition of education as a governmental function. The mediæval view that this matter was primarily a concern of the church and that its ultimate aim was to provide an educated clergy, was shared by the New England theocrats. When, in 1647, Massachusetts enacted a law requiring every township of more than fifty families to maintain a schoolmaster, it was acting in harmony with this view; for since under the Calvinistic polity the state was but an arm of the church, the Massachusetts statute did no violence to the accepted doctrine. It was not until church and state were separated that elementary education there became truly a governmental function. Secondary education as well was dominated by ecclesiastical influences. Institutions of higher learning had as their confessed aim the preparation of men for the ministry. As a private interest

In the middle colonies, too, education was viewed as a function of the church or of the family, and state interference was sometimes resented. When it was provided outside the home, it was through the parochial school supplemented by private schools patronized by the well-to-do.

In the South, no general provision for education was made. The families of means brought in from England the system of private tutors for their children, while the older sons were sent to private institutions like the College of William and Mary, or to England. Educational development has been steadily away from the ideals of that day and in the direction of education at public expense and

under secular control, first in the field of elementary education and ultimately in secondary and higher education as well.

The establishment and maintenance of public education, first, in elementary, and at a later date in a secondary schools, when ultimately it was accepted as a proper subject of public undertaking, was looked upon as primarily a matter for local action. But that it was a subject of state as well as of local concern was early appreciated in many quarters, even in the South where a distinct preference for private schools was observable. The constitution of North Carolina adopted in 1776 declared:

"That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged, and promoted in one or more universities."

By the year 1800 at least seven state constitutions made some reference to education. Massachusetts, New York, New Jersey, Maryland, Virginia, and Georgia had by that year enacted legislation dealing with the subject. In accordance with the spirit of the ordinance for the government of the Northwest Territory declaring that "Schools and the means of education shall forever be encouraged," the frontier states of that region made early provision for public education.

The generally accepted principle of the decentralization of educational administration went so far in New York and Indiana as for a time to threaten the existence of state control altogether. From the middle of the nineteenth century, which witnessed a remarkable renaissance of public interest in education throughout the northern states, to the present time there has been a constant tendency toward centralization in school administration under general state supervision and control.

In discussing in general the present scope of state control of education and, in particular, typical provisions touching the same in newer state constitutions, Professor Elwood P. Cubberly says: ¹

"In reading the article on education in any of the recently formed state constitutions one can have no doubt that education has now become an important state interest; or that the state is the real unit in educational affairs. There is usually a 'mandate' at the beginning, directing the legislature 'to provide by law for a general and a uniform system of public in-

¹ *State School Administration*, p. 125.

As a
public
interest

Assumed
by
the state

Scope of
state
control of
education

struction, wherein tuition shall be free, and which shall be equally open to all.' This order is commonly followed by a definition of what units or divisions or schools shall constitute the state educational system; the types of school corporations, and a classification of them for organization and control frequently follows; a state executive officer for the system, and a state board of education are nearly always provided for, and the main powers and duties of each are stated; the items that go to form the state school fund are enumerated; the sale and lease of the state school-lands are provided for; the protection of the state school fund from legislative diversion is made; what shall constitute the state school tax and fund, and the basis for the apportionment of the proceeds of the same are laid down; aid for sectarian schools is prohibited; a system of state school textbooks, and how they shall be obtained, is sometimes included; the minimum school term allowed is stated; the certification of teachers is provided for; and the form of government for the normal schools and the state university is defined, and often the support of these institutions is made mandatory upon the legislature. An examination of the articles on education in the different state constitutions reveals a number of other provisions as well, some of which are not good, a few of which are positively harmful, and others, while not bad in themselves, are undesirable as constitutional requirements; but the above general outline of contents represents the main provisions relating to the state school system as usually found in the article on education in recent constitutional documents."

This enumeration gives some notion of the scope of state activity in the field of education in those states where that control has reached the highest development. In many states where the constitution provisions are less specific, legislative enactment has covered substantially the same ground and has included much detail that appears in no constitution.

At the present time and during the whole of the last fifty years, education has been the largest single object of public expenditure by the state and its subdivisions in the United States. In the year 1924 the states expended more than \$360,000,000 for the support of schools and libraries in addition to the sums granted by the federal

Financial
support

government and those raised by local school areas for the same purpose.

Land grants: Although the federal government does not itself engage in general public education directly, it has contributed largely in the form of grants of both land and money. Thirty states have received a total of approximately 145,000,000 acres of land from the central government in aid of education. Land to the extent of one-half the combined area of the states of New Hampshire and Vermont has been given to the states by the federal government in support of agricultural and industrial education alone. Although these lands were badly administered in many cases and frequently sold at nominal prices, over \$250,000,000 have already been realized from their sale. If the portion still in the hands of the states is well administered it should yield from two to three times that amount. In addition to these enormous grants of land, the federal government has given, and still continues to give, millions of dollars annually in aid and encouragement of education by the states.

1. By the federal government

2. By the states

The states themselves have set aside not less than 78,000,000 acres of land, the proceeds from which are devoted to school purposes. In some of the older states special school funds were early created and have been augmented from time to time by the addition of the income from various specially designated sources. At the present time some of these funds have grown to large proportions.

Dual system of administration

The development of state administrative organization has kept pace with the expansion of the educational system and with the increasing degree of control exercised by the state. A unique feature of this development has been the evolution in a majority of the states of a dual system of administrative control consisting of a superintendent of public instruction and a board of education. The specific partitioning of the work of administration between these two authorities, as well as the relations which each bears to the other, vary greatly from state to state; but at the present time, taken together, they exert a powerful guiding and controlling influence of the states' educational system from top to bottom.

State superintendent

Chronologically the state superintendent precedes the board of education. Almost coincident with the first efforts of the state in the interests of public education there appeared the state superintendent. In some cases the secretary of state or some other state officer acting *ex officio* performed such rudimentary functions as had earlier developed. Soon, however, the duties of the office were dissociated from those of any other, and the superintendent took

his place as the first addition to that earliest group of administrative officers to be found in the original states. By the middle of the nineteenth century all of the northern and some of the southern states had provided for a superintendent acting either *ex officio* or as an independent officer, and at the present time every state has such an official. In over two-thirds of the states the superintendent is at present chosen by popular state-wide election. In the remaining third, selection is about equally divided between appointment by the governor and by the board of education. The term of office is usually the same as that of the other elective or appointive officers of the state, either two or four years, although in the states where he is an appointee of the board of education his tenure is more permanent. As a rule, especially in the states where the office is elective, the salary is entirely inadequate. The superintendents in the larger cities of the state ordinarily command a higher salary than does their superior officer at the head of the state school system. The development of the office from one of a clerical nature to one of an important professional character has, moreover, too often not been accompanied by a corresponding advance in the attitude and the ability of the incumbent. The unwillingness on the part of the people of the state to pay a salary commensurate with the importance of the office has contributed to this unfortunate result, so that the best educational administrative talent is usually not found in the office of the state superintendent. This condition of affairs is further due to the fact that the office is filled by popular election. This practice illustrates very well the intense conservatism of the American people with respect to political institutions. The office was instituted at a period when supreme confidence was reposed in the ballot box as the best means of choosing public servants. Consequently, the older states adopted and still adhere to this plan, and most new states have copied the practice. This they do oblivious of the fact that the position is one essentially professional and not political in its nature, and ignoring the further fact that attempts to fill positions of a technical character by popular election are foredoomed to failure. If the position of nominal head of the state's educational system is to be made one of real leadership, means must be taken to secure men of educational vision and adequate technical training, as well as matured administrative experience. This end, it seems certain, can be accomplished only by giving to that official an indefinite term and placing his selection and removal in the hands of a properly constituted board of education.

Board of
education

In forty-six states there exists, in addition to the superintendent of public instruction, a board of education. The first such body exercising functions akin to some of those performed by modern boards of education to-day was the "President and Directors of the Literary Fund" created in North Carolina. As their title suggests, their duty was that of trustees of the state school fund.

As a result of the awakened interest in education which was manifested in the middle years of the nineteenth century, Massachusetts established a board of education in 1837, and by the opening of the Civil War, similar bodies had been established in a number of states. The membership of the boards of education varies from three to fifteen members. The terms of office vary widely but are usually overlapping so that no sudden reversal of policy is likely to occur. The functions first assigned to these boards were in a measure similar in their field to those exercised by boards of charities in another direction. Their earlier duties were chiefly investigative and advisory to the superintendent where such officer existed, but to these were sometimes added the duty of administering the state school lands and funds. With the progress of time their functions expanded beyond the advisory stage, and they are found prescribing courses of study and qualifications of teachers, and making rules for the guidance of school officers,—all matters of a quasi-legislative or policy-forming character.

Classifica-
tion of
boards of
education:

With respect to composition, boards of education fall into three fairly distinct categories.

First there are boards made up of state officers acting *ex officio*. These usually include some of the elective officers, such as the governor and secretary of state, along with the superintendent of public instruction. Boards thus constituted are open to the objections attaching to *ex officio* boards wherever found if they are to perform duties beyond those of a most formal character. They can render but slight service to the cause of education, since the holding of another state office is no indication either of knowledge of, or interest in, the problems arising in this field. Moreover, such persons are likely to be fully occupied in their regular duties and unwilling or unable to give the attention which is desirable. Then, too, such officers are political, and there is the constant danger that political considerations and spoils practices may enter to affect their action.

A second type of *ex officio* board is that made up wholly or predominantly of professional educators. Boards of this type sometimes include also *ex officio* members or laymen appointed by the

1. *Ex
officio*

governor. Such bodies usually include the heads of the state's institutions of higher learning: universities and normal schools, and administrators or teachers selected from the public school system. Like the state officers referred to above, these men are immersed in the work attaching to their regular positions and cannot devote continuous thought to this important duty. Sometimes school politics and petty rivalries between institutions have crept in to the detriment of their service as board members. The most serious defects of bodies thus constituted are those inherent in professional boards. The duty of these boards is not to administer, but to advise and to deliberate upon and determine policies. What is called for from these bodies is not to give the advice or the conclusions of technical men upon technical problems of administration, but to act as intelligent and interested laymen. They are to bring to their task the viewpoint of the citizen who has some vision of the aims of education, and who will apply his judgment and experience in affairs to developing educational policies. The necessary technical knowledge and skill will be better contributed by the superintendent, provided his selection is upon a proper basis. In certain instances a board made up of school men has been devised to compensate for the lack of technical qualifications often found in the superintendent who is popularly elected.

2. Profes-
sional

The third type is found in states where both *ex officio* and professional members are dispensed with and the board is made up of laymen, usually appointed by the governor but sometimes elected by the legislature, and in Michigan elected by the voters.

3. Non-
profes-
sional

It is generally conceded by students of the subject that this form, when the appointment is vested in the governor and when the superintendent is elected by the board, is the most desirable type of organization since it avoids the defects inherent in the former types and concentrates responsibility for selection in a single responsible officer. When the selection is in the hands of the legislature it is found that since responsibility for the selection is diffused political considerations are peculiarly likely to influence the selection. Selection by the people, in spite of notable exceptions on record, is likely to be guided by purely political considerations.

Wide differences are to be found in the relations which exist between the state superintendent and the board of education in the various states where they exist side by side. In some instances there is little or no official connection and occasionally, it is to be feared, little attempt at coöperation between them. In some cases

Relations
between
super-
intendent
and board

the superintendent is the responsible head and the board acts only in an advisory capacity. In other instances a confused situation exists whereby the superintendent has his independent duties and powers but is at the same time an *ex officio* member of the board and its executive officer acting under its orders. In still other cases, as, for example, in the three southern states of New England, Minnesota, and a few others, the board is the responsible head of the department while the superintendent is appointed by the board and acts as its executive agent. Where the latter relation exists the title of this executive officer is more frequently secretary of the board of education or commissioner, than superintendent.

Functions
of the
department

The functions of a state department of education are everywhere substantially the same whether administered by a board of education or a superintendent or both combined. The task is especially to exercise supervision, direction and control over the system of elementary and secondary education. In a few instances the department includes among its functions that of managing the state's institutions of higher education, including the university, and the normal and other technical schools. More frequently, however, these institutions are under separate control, either by a single board of regents or trustees, or by boards for each institution. In certain instances, too, special boards have been created to administer teachers' retirement funds, and in about a third of the states the federal grants-in-aid for vocational education are distributed through a special board.

As in the case of other administrative departments, its earliest functions were confined to the gathering of information, statistical and otherwise, and seeking to stimulate public interest in matters of education. It has been pointed out above that another early duty was the administration of school lands or of the funds derived from such lands. In course of time appeared as important duties the visiting of schools and examining of local school conditions, advising with local school authorities, issuing forms and blanks for the keeping of records and the making of reports, and the holding of institutes and conferences to promote the professional excellence of teachers. Later came the examining and licensing of teachers, prescribing courses of study, both in the common schools and in the normal schools, and the training of teachers. In the state of New York, the department of education sets uniform examinations for the students in both elementary and secondary schools. In recent years the scope of state educational activities has broadened;

and now in a number of instances the department is concerned with such matters as the construction and sanitation of school buildings, and general child-welfare, including child hygiene. In some states officers of the department sit as an administrative tribunal with extensive power to hear and determine disputes in educational matters arising in the local school systems. By no means the least of the functions of the department is the duty of supervising the local schools to determine whether there is compliance with the state school laws. The extensive system of grants-in-aid from the federal government and, in some cases, by the states, with their accompanying conditions has given to the state departments extensive additional duties of supervision and, incidentally, a powerful leverage of control over local school conditions.

In practically every state there is located at the capital a state library supported by state funds. In some instances this is little more than a law library for the use of the courts and the bar and a reference library for the assistance of the legislature and the state administrative officers. Especially in the newer states where local library facilities are more limited, this institution has expanded into a general reference and circulating library, making loans of books to local libraries and to individual citizens.

State
library

The states very generally render technical assistance and advice to communities in the organization and management of their public libraries and in the selection of books. In some states grants-in-aid, either in the form of books or money, are given to the local institutions in the state. These services to local libraries are sometimes extended through the state library, sometimes through the department of education, and elsewhere through independent public library commissions.

Aid to
local
libraries

From colonial days until the present the building and maintenance of highways has been looked upon as primarily a function of local government. Until long after the Revolution, as a result, the main thoroughfares were execrable and the byroads impossible. Growth of population and the accumulation of wealth brought about improvement in the local highway systems, although there was great variation in their excellence in the several states and localities. With the opening of new lands in the interior, there was a general demand for better roads to supplement the inadequate waterways. As the localities were unwilling or unable to supply roads further than to meet in an indifferent way their local needs, other means were sought for providing arterial roads and highways.

Highways

Develop-
ment of
highways:

1. Early
develop-
ment

The cost of construction and of maintenance of these "turnpikes" was met with tolls collected from those travelling upon them. Many of the larger bridges were in like manner built and maintained by private companies.

As a part of the program of internal improvements embarked upon by the states in the first quarter of the nineteenth century, elaborate projects of highway construction were conceived and certain state highways constructed. The federal government, too, was prevailed upon to enter the road-building field. The most famous example of this federal policy was the Cumberland Road, forming that part of what is known to the automobilist as the National Old Trails highway, extending from Cumberland, Maryland, west to Vandalia, Illinois.

Two causes combined to put an end, temporarily, it now appears, to state and federal participation in road building. The collapse of the financial structure upon which the program of internal improvements was erected brought that program to an abrupt close. Furthermore, the appearance and rapid development of the steam railway made obsolete that particular portion of the highway system which the states and the federal government had been called in to supply, *viz.*, the main highways for long-distance transportation.

So, then, the work of road building and maintenance was thrown back upon the local areas and upon private initiative. The custom of paying tolls on highways and bridges began, however, even before the Civil War, to fall into popular disfavor in many parts of the country, and the last quarter of the nineteenth century witnessed a general disappearance of the toll gate. Turnpikes either were abandoned or were taken over by the local authorities as public highways.

2. State
partici-
pation

One of the outstanding facts of the development of transportation within recent years is the reëntry of the states and of the United States into the field of road building. As late as 1890 no state possessed any administrative agency which concerned itself with highways, and virtually no state funds were devoted to highway construction or maintenance. The present state activity in this direction may be said to have begun with the inauguration in New Jersey, in 1891, of the policy of extending state aid to highway building.

By the year 1900 a similar policy had been adopted in Massachusetts, New York, Connecticut and California.

The introduction of the automobile and the bringing of it within the reach of the average farmer and craftsman created everywhere

a demand for better roads, and as a result there has come an expansion of highway building undreamed of a generation ago. Of the nearly three million miles of public roads in the United States in 1926, over 270,000 miles were under some form of improvement by the states and mostly accomplished within the last ten years.

Beginning in 1916, the federal government adopted a policy of subsidizing state road building on a large scale, inaugurating its policy with a grant of \$5,000,000. The amount granted has gradually been increased until for several years past from \$75,000,000 to \$100,000,000 has been given to the states annually in aid of their road-building plans.

3. Federal
partici-
pation

When the federal government adopted the policy of grants-in-aid to state highways, sixteen states had as yet no administrative organization to deal with problems of road construction and maintenance. But immediately upon the inauguration of the new federal policy, such departments were created in every state, but with varying names, powers, and forms of organization. The sums of money spent and the technical character of the work call for a somewhat elaborate organization with a high degree of centralization of responsibility. Some of these departments are headed by a commission the members of which are usually appointed by the governor, while others are under the control of a single commissioner, chief engineer, director, or superintendent. In a few states public works departments are maintained and the highway organization, headed by a highway engineer or superintendent, constitutes a bureau under this department. However the department may be constituted, there are usually to be found several technical divisions or subdivisions. In New York one of these divisions deals with local roads, while two others are concerned with state roads. The Texas Highway Department has four technical bureaus: of design, testing, bridge engineering, and road engineering, and two non-technical bureaus of motor vehicle registration and auditing, subordinated to a state highway engineer appointed by the highway commission. Under the state highway engineer in that state, as in a number of others, there are division engineers in charge of construction and maintenance in the several highway districts. In the state of Vermont where the highway organization is very simple, there are no bureaus at all, but there are district highway commissioners for various sections of the state.

The necessity for continuity of policy is perhaps more strikingly apparent, if not actually more to be desired, in highway affairs than

in most other branches of administration. The question of vast economic as well as technical importance with which the department deals cannot safely be subjected to the chance of shifting political majorities. Hence it is essential that the commission or other responsible head of the department should be given stability in its composition. That body should be given broad powers over the highway policy; but when they attempt to concern themselves with the personnel or the technical aspects of the work the results are inevitably far from satisfactory. Whatever the form of the department head and whatever the term of office, it is preëminently necessary that the technical personnel should enjoy permanence of tenure and freedom from political pressure of all kinds.

Problem
of
personnel

The whole problem of recruiting the staff of highway departments has proved a serious one. The number of positions at its disposition, as well as the large contracts made by it, has caused the department to be viewed with longing by the spoilsmen in most states. The technical nature of much of the work makes the introduction of spoils methods particularly disastrous in highway administration. In the states where such methods have not been tolerated, the departments are functioning as a rule with great efficiency. Unfortunately the merit system has not as yet made appreciable progress in most states. As the public becomes aware of the waste of money which the spoils system entails, it may be hoped that the next few years may see a more general application of the merit system to highway departments.

In a few states the highway authorities have advisory powers only, though in most instances they exercise a real control over the state's system of highways.

Depart-
mental
functions

The functions of the technical and clerical personnel of state highway departments are numerous. All state departments must supervise the improvement and maintenance of those highways on which federal aid money is expended. The functions performed in connection with this work include the preparation of statements concerning projects for which federal aid is requested, making surveys and plans of construction for proposed roads and bridges, preparing specifications and contracts in accordance with the federal standards, testing the materials used in this construction work, and inspecting the work in its various stages. In addition to the supervision of federal highways, the state department is also intrusted with the supervision and maintenance of the state's own trunk-line

road system. In some instances the state department does not itself carry out the work of construction or of maintenance but merely exercises general supervision over the county authorities who do the actual routine work involved. More often, however, the department itself is in direct charge of the work. Sometimes the work of maintenance is intrusted to the county highway organization which is in some respects better suited to undertake that duty than to engage in technical work and to inspect construction. Many states have what are known as state-aid roads. These are designated roads which are under local control but toward the improvement of which the state is willing, on account of their importance, to grant aid. State inspection and approval accompany such grants, and state standards are usually imposed upon the local units in this work.

The laws creating the several state highway departments impose upon them a great variety of functions, but perhaps the more important of them can be classified under seven different headings. These have been enumerated in the recent standard work on the subject as follows: ²

“1. To provide or to assist in providing a system of adequately surfaced state trunk-line highways. Functions summarized

2. To maintain or to direct the maintenance of the state trunk-line highways.

3. To devise a financial plan for constructing and maintaining the state highways and to assist legislators in making such a plan effective.

4. To coöperate with the federal government in the expenditure of federal aid for highways.

5. To promulgate regulations relative to the use of public highways and to assist in the enforcement of the laws embodying those regulations.

6. To furnish technical advisory service to the officials of the smaller political units of the state, when such assistance is desired, and sometimes to supervise more or less in detail the work of the county and township highways officials.

7. To disseminate general information relative to highway matters in the form of general reports and particularly in the form of non-technical publicity.”

² AGG, T. R., and BRINDLEY, J. E., *Highway Administration and Finance*, (New York, 1927), p. 59.

To these should be added, for a number of states, the extraneous though related function of collecting motor-license fees.

Effects of
grants-in-
aid

Besides the direct financial assistance brought by federal grants-in-aid to highways, other administrative benefits scarcely less important have resulted. "Standardization of highway plans, specifications, methods of testing, more uniform standards of design for roads and bridges, the pooling of information with reference to construction methods, general improvement in organization methods, and a better correlation of different phases of highway work, all developed in the wake of federal aid."⁸

The granting of federal aid is conditioned upon the acceptance by the state of a degree of supervision by the federal authorities over both the plans for each particular project undertaken and the quality of construction which is calculated to enforce high standards of engineering for all roads which are the beneficiaries of such aid.

A purpose of federal aid has been to knit together into a single national system the highways of the several states. To further that end, in 1926 the Secretary of Agriculture appointed a board which has designated as federal highways certain roads which have been given continuous route numbers throughout their entire length and for which a uniform system of road markers has been adopted.

Regula-
tion of
business:

So long as agriculture was the principal economic activity of the people, business required no governmental regulation. Neither did the prevailing political theory warrant any such action on the part of the government. It was not until the process of industrialization had progressed to the point of becoming socially significant that government was called upon to regulate business and industrial activity. The first half of the nineteenth century witnessed a rapid industrial development of the eastern section of the United States and the widespread adoption of the corporate form of business organization.

The enormous growth of commerce and industry and the tendency for these enterprises to be conducted under the corporate form of organization have contributed to bring into being and to determine the nature of a new field of state activity—that of the control of business. This regulation has taken the form, in the first place, of the control of the creation and organization of corporations for whatever purpose created, and, in the second place, of the regulation of certain lines of business which have become affected with a public interest and which commonly assume a corporate form.

⁸ *Ibid.*, p. 141.

First may be considered their creation, organization and supervision in general. Corporations owe their existence to the government and are formed under either general or special laws. In the earlier decades of the nineteenth century, they were usually authorized by special statutes enacted by the legislature. This soon gave way to the practice of creation by general incorporation laws, and at the present time most corporations are created under authority of such general statutes. Certain procedure is prescribed by these statutes and when this is complied with by any group of persons a corporation may be formed. The document or statute in which the powers of the corporation are set forth, the organization of the corporate government provided for, the methods of conducting business outlined, and the rights of stockholders stated is called the charter. The charter of a corporation is a contract, and the state government may not change any of its provisions without the consent of the incorporators unless the charter contains a provision that the state government may make such changes without their consent. Most corporation laws at present, in compliance with specific directions in the state constitutions, contain a provision that corporate charters are granted subject to repeal or amendment by the legislature.

1. Regulation of corporations:

(a) Incorporation

State governments now attempt to exercise some degree of control over the formation of corporations. To this end the secretary of state, or in a few states a corporation commission, are intrusted with the duty of issuing charters or articles of incorporation in accordance with the general corporation law of the state. The duty of such officers is to inquire into the purpose for which incorporation is desired and to scrutinize closely the various statements set forth on the application blanks presented by applicants in order to make sure that all statutory requirements have been met. A fee based upon capitalization is charged for the issue of certificates of incorporation. Corporations created in one state are ordinarily authorized to do business in other states. In the state of their origin corporations are known as "domestic," while in other states they are designated as "foreign" corporations. It is a common practice to exact from a foreign corporation desiring to do business in the state a higher fee than is required of a similar domestic corporation. Some states have lowered to such an extent their requirements for the granting of incorporation that outside persons are attracted to the state to secure incorporation although their purpose is to do business in a distant state. The state granting such favorable terms secures thereby substantial revenues from the fees collected.

(b) Business transactions

The need of state supervision does not end with the issue of the charter or certificate of incorporation, but continues as long as the corporation remains in active existence. Reports containing statements concerning the amount of business done, the value of its property within the state, net profits, gross profits, and a multitude of details are filed at stated periods with the department supervising corporations. These reports are examined to determine whether the laws have been complied with; and when serious violations are detected the corporation, if a foreign one, may have its permit to do business in the state annulled or, if domestic, may have its articles of incorporation or charter revoked.

"Blue-sky" laws

Since fraud has often been perpetrated upon prospective investors by the issuance of worthless stocks and bonds, the majority of states now have securities laws, popularly known as "blue-sky laws." These are designed to prevent corporations from offering for sale to the public stocks and bonds which do not represent a sufficient amount of tangible or intangible property. They require that full information be submitted concerning the nature of the securities proposed to be offered, the financial condition of the company, and the property upon which the securities in question are based. In the event that such representations are satisfactory, a permit to offer the securities for sale is granted. These laws do not, as is frequently erroneously believed, insure wise investments, but merely attempt to protect the investors against fraud. It is still quite possible that issues of securities may be sold which may later prove to be worthless. These securities commissions have doubtless saved the public large sums of money annually. Brokers and dealers in securities of any kind are sometimes required to secure a license to carry on their business and are obliged to render reports with respect to the business transacted by them, their profits, and commissions secured on various types of securities handled.

Although in certain instances the supervision of corporations is efficiently conducted through the office of the secretary of state, as a rule better results have been secured where a corporation commission or securities commission has been created to devote its whole time to this important work.

2. Business affected with a public interest:

Second, the state undertakes to regulate certain business enterprises which, on account of the nature of the business engaged in, make them of particular interest to the public. Three kinds of business usually conducted in corporate form, have everywhere

become objects of special regulation, *viz.*, banking, insurance, and public utilities.

Two of the most strictly supervised commercial activities are banking and insurance. Institutions engaged in these activities are intrusted with the savings of the public, and on that account it is especially desirable that they should be honestly and efficiently managed. Since the service performed by the state with respect to these lines of business is of the same general nature, a number of states place the supervision of both in the hands of a single administrative department.

State statutes fix certain requirements as to the organization and capitalization of banks, the liability of stockholders, forms of investment permitted, and the nature and amount of loans to be made. Examiners are sent out by the state department of banking who without warning appear and make examination of the books and accounts of banks, trust companies, and building and loan associations. Their mission is to determine whether business is conducted and records kept in accordance with law. If a bank is found to have been guilty of irregular practices it is called to account or even under certain circumstances closed.

If upon examination it appears that the institution is insolvent it may be not only closed but a receiver may be appointed either to reorganize it or to wind up its affairs.

A few of the western states have attempted to safeguard depositors by compelling banking institutions to contribute to a state "guaranty fund." In the event of a bank becoming insolvent this fund is drawn upon to pay the depositors the amounts which they would otherwise lose by the failure of the bank. Experience has shown that if banking in the state is carefully supervised and conservatively carried on, such guaranty funds are unnecessary, and that if the business is loosely supervised and recklessly managed the fund is likely to prove inadequate to afford protection to the depositors. For these reasons the guaranty of bank deposits has not proved as successful as was anticipated by its proponents.

Insurance companies may be incorporated in a state or, having been organized elsewhere, may be licensed to do business in the state. When foreign insurance companies are admitted to do business in the state their affairs are carefully examined to determine whether they are substantially complying with the statutes governing domestic companies, especially with respect to their investments, the

(a) Bank-
ing insti-
tutions

Bank
guaranty
funds

(b) In-
surance
companies

number and type of policies issued, the distribution of funds, and the surplus maintained.

In many states insurance companies are required to deposit with the state securities of a certain value as safeguard for the benefit of the policyholders in case the company should become unable to meet its obligations. Statutes are usually strict in regard to the types of policies permitted to be issued and the types of investments which may be made by the companies. For irregular practices a foreign company may be excluded from doing business in the state. If a domestic insurance company becomes insolvent it may be taken possession of and its affairs may be wound up, and, if it be a foreign company, the deposited securities may be sold and the proceeds distributed to policyholders.

The confusion and the burden of regulation of insurance by forty-eight states has led to a demand on the part of the companies for federal regulation instead. But since the Supreme Court has held that insurance is not a form of interstate commerce, the national government has no authority to enact laws upon the subject.

(c) Public
utilities

On account of the monopolistic character of public utility enterprises, they are more minutely regulated as a rule than are any other kinds of business. If the corner grocery is unfair in its business methods or excessive in its charges, the consumers have some measure of protection in the fact that they may transfer their patronage to another store. If, however, a street-car or water company charges too much for its service, there is no corresponding remedy open to the consumer. It is not practicable to have two street-car systems in the same street, nor two water companies in the same city. It has been found that in such undertakings, regulated monopoly is likely to serve the consumers better than attempts to preserve competition, which are bound in the end to prove futile.

Public
utility
commis-
sions

Public utility regulation was first attempted through the medium of the courts, but this proved ineffective. Shortly after the Civil War the states began establishing commissions to investigate and make reports on the business and practices of railroads, but gave to such bodies no regulatory power. With the growth of public utilities, not only railroads but water, gas and electric companies and, more recently, motor bus companies and others were brought under state supervision. In the place of the railroad commissions there were created bodies known as "public utility" or "public service" commissions, exercising much broader functions than did their predecessors. At the present time the commissions are author-

ized, not only to investigate and report upon conditions, but to hear and determine controversies, issue orders and regulations, and to enforce the state statutes as well as the rules and regulations made by the commission itself. In some states their supervisory power is extended to include municipally-owned as well as privately-owned plants.

The functions exercised by the commission having most comprehensive powers may be grouped as relating to the following subjects: the issue of securities, accounts and reports, permission to operate, valuation, rates, service, consolidation, and abandonment.

Functions
of public
utility
commis-
sions

Somewhat as has been indicated above in the cases of corporations in general, the commissions exercise rather strict control over the issue of stock, bonds, and other obligations which might place a future burden upon the public. To facilitate the supervisory work of the commission and to keep the public informed concerning enterprises in whose operations they have a special interest, forms of accounting and reporting are prescribed for the utilities. On account of the great economic wastes involved in the unnecessary duplication of plants and in attempts at competition in enterprises which are natural monopolies, it is not unusual to require utility corporations to secure "certificates of convenience and necessity." This must be done in each case before they are authorized to begin construction or extensions of their plant, or to undertake new services. It was formerly necessary, before actual construction could be begun or service offered, to enter into a contract known as a "franchise," with the authorities of the local area to be served. The franchise takes the form of an agreement whereby in consideration of a certain service—water, light, transportation, or what not—the local authorities permit the utility to occupy public property with its plant or appurtenances. More recently in a number of states, there has been substituted for the franchise an "indeterminate permit" granted by the public utility commission, giving the corporation permission to enter, install its plant, and render service under responsibility to the state directly. An indeterminate permit is virtually a permission during good behavior, *i.e.*, so long as unlawful practices are not indulged in and satisfactory service is rendered at reasonable rates. So long as this is done the utility company is given assurance that no permit will be granted to a competitor.

It is not uncommon for commissions not only to declare particular charges unreasonable, but to fix schedules of rates to be charged for services. To this end commissions are usually empowered to make

valuation of plants and the property of the corporation. Sometimes the law permits the utility company to fix its own rates, and the commission interferes only when it appears that the rates so fixed are unreasonable.

The tasks of valuation and rate-making are arduous and highly technical, and for such purposes a staff of engineers and other trained assistants is maintained.

It is the duty of the commission, further, to see that proper service is rendered to the community. This duty of deciding what constitutes reasonable service frequently taxes the best judgment of a commission. Public utility companies are neither permitted to merge their properties nor to abandon a service except with the consent of the commission. Detailed rules are sometimes issued by the commission dealing with quality of service, adequacy of facilities, and other matters concerning the relations of the utility to the consumer.

Criticisms
of public
utility
commis-
sions

Members of the public utility and railroad commissions are chosen by popular election in a few states, but in most cases are appointed by the governor, with or without the consent of the Senate. Few states prescribe any special qualifications for membership on the commission, although their work calls for a display of talent of a high order. The position in which the commission finds itself, as is the case of some other administrative commissions, is difficult since it has a double duty to perform. As an administrative body vested with wide powers of discretion it must enforce the regulatory statutes and supervise the activities of the utilities in such a way as to safeguard the interests of the public. It must, at the same time, act in a judicial capacity by holding hearings at which citizens appear to make complaint as to rates or service, while the utility defends its position; or the utility appears to ask for a modification of rate or of service, the citizens opposing such changes. It is the duty of the commission in such cases to make a finding of fact and enter an order in the premises.

Thus the commission in its judicial capacity is called upon to sit in judgment in matters in which, in its administrative capacity, it should stand as the advocate of the public's cause. The solution adopted by most commissions has been to assume a strictly judicial attitude, allowing the complainant and the defendant to present their cases, basing their decision on the evidence introduced by either side. In the course of time, formalities of procedure have been de-

veloped, which, although more simple, remind one of those observed in the law courts.

Due to the impartial attitude assumed by the commission in such controversies, the utility, by the aid of the superior legal talent at its command, is placed in a position of distinct advantage over the citizen or the municipality making complaint.

Commissions were created at a time when there existed a strong popular sentiment against all utilities because of the policies adopted by certain unscrupulous companies, and it was anticipated and desired that the commissions should adopt an aggressive attitude as champions of the public in their controversies with the utility corporations. Sweeping reductions of rates and greatly improved service were confidently looked for by the public as a result of commission activities. Consequently, when these bodies assumed a judicial air and sometimes even consented to an increase in rates, there was keen resentment everywhere and charges of corruption were freely made against members of the commission in some states. While there have doubtless been instances of improper influence exerted, the great majority of the commissions have been composed of men who sought to be entirely fair and honest in their dealings, both with the utilities and the public. The real sources of the difficulty seem to have been, in the first place, in the policy generally adopted in the selection of commissioners, and, in the second place, in the dual position of advocate and judge in which they have found themselves. Much of the grounds for criticism might be avoided if those in whom the power of selection is vested could be made to realize that the work of public utility supervision is a highly professional task, demanding the services, not of persons appointed primarily for political reasons, but of trained men of vision, experience, and judgment. Moreover, an illogical situation would be terminated if the regulative and other administrative functions of the commissions could be divorced from the judicial, and the two classes of duties vested in two distinct authorities.

Sources of
defects of
commis-
sions

In spite of the defects of this method of public utility control, much real progress has been made by the commissioners in the solution of many vexing problems arising from the relations of the utilities and the public.

One of the grave problems arising from commission control has been the attitude toward them assumed by the courts in many jurisdictions. In their judicial work the commissions have brushed aside the more formal procedure of the courts and legal rules of evidence,

and have adopted more summary methods. By many courts these innovations have been viewed with professional disfavor, if not with positive hostility. The findings of fact by the commissions are by statute in many states made final, but appeals upon points of law are everywhere permitted. During the earlier years of commission activity appeals were frequent, delays ensued, and many of their determinations were set aside. In more recent times mutual distrust has abated, and the work of commissions has become generally respected by the utilities and viewed with some degree of complacency by the courts.

Agriculture

During the first half of the nineteenth century, the promotion of the agricultural interests of the state was in the hands of voluntary societies either local, or state-wide, or both. At an early date the custom originated of granting public funds in aid of these societies. About the middle of the century there were created by law state boards of agriculture made up of representatives of the local agricultural societies throughout the state. As early as 1853 in Massachusetts, certain state officers were made *ex officio* members of the board, and soon afterward a considerable number of mid-western states adopted the policy of subsidizing these semi-public boards.

Private societies

The purpose of the societies and the earlier boards was, primarily, to foster interest in agriculture, to encourage the breeding of better animals, and to promote the introduction of better seeds as well as improved methods of culture. The financial burden imposed by experimentation and demonstration was already becoming too great to be carried by private societies, when the passage of various regulatory laws made it imperative that the whole burden be assumed by the state.⁴

Forms of administrative organization:

Beginning with these voluntary or semi-public institutions, the tendency has been to create a more elaborate organization and to make it a distinctly governmental authority. In some states agricultural work has become highly centralized while elsewhere it is still in a marked decentralized state. No less than three distinct forms of organization may be found among the states.

1. Disintegrated and decentralized

Connecticut exemplifies those states which have an extremely disintegrated administration. There is a state board of agriculture including, besides the governor who is a member *ex officio*, thirteen other members appointed in part by the governor and in part elected by the legislators from the several counties. The board appoints its own treasurer and a secretary who is its executive officer. This

⁴ WEIST, EDW., *Agricultural Organization in the United States*, Chap. XIV.

board disburses the state funds distributed to local agricultural societies and one of its chief functions is to promote state and local agricultural fairs.

Besides the board of agriculture and entirely independent of it, is a commissioner of domestic animals in charge of the work of preventing and eradicating diseases among animals. An independent dairy and food commissioner enforces the pure food laws. This latter officer, together with the attorney-general, the commissioner of health, the secretaries of the board of agriculture and the state dairymen's association, constitutes a milk regulation board. Other independent officers who exercise regulatory as well as promotive functions are the state forester, state entomologist, and an inspector of fertilizers.

In New York, which exemplifies a second type, the situation is organically not different from that in Connecticut except that all agricultural activities are consolidated in a single department. The responsible head of the department is a "Council of Farms and Markets" elected by the legislature and hence beyond the control of the governor. A commissioner of agriculture is appointed by the council to hold office during its pleasure. As the executive officer of the department he appoints his subordinates and is in direct charge of administration but must submit all matters of policy to the council for its approval. The internal organization of the department suggests the wide scope of its activities. There are included bureaus of farm settlement, statistics, dairy products, plant industry, animal industry, institution farms, markets, coöperative associations, licenses, weights and measures, food products and standardization.

2. Integrated and decentralized

In the third or Pennsylvania type, there is the same integration of work as is found in New York, but here the board or council has been dispensed with and a thoroughly centralized system instituted. The responsible head of the department is a secretary of agriculture appointed and removable by the governor. He not only appoints and directs his subordinates, but is himself responsible to the governor for the policies instituted.

3. Integrated and centralized

Whatever the form of organization, the mission of the department is always the same. It is a fact, however, that neither the same energy nor effectiveness in results can be secured under the Connecticut form as under the New York or Pennsylvania plan.

The agricultural experiment station is ordinarily associated with the college of agriculture rather than with the department. The major part of the investigative and experimental activities, as well

as the more formal educative work, is done by the college and the experiment station. The department, however, usually maintains close relations with these institutions as well as with the federal department of agriculture and the farm bureau organizations. The department, too, performs both statistical functions and educational work of a more informal and popular kind. The regulative statutes in this field are chiefly in the hands of the department where that agency is well developed.

One of the most recent developments in many states is the work in marketing. Market and crop conditions, not only at home but in surrounding states, are observed, markets and marketing methods studied and reported and assistance given in the development of coöperative marketing organizations.

The Pennsylvania department has no less than 800 volunteer reporters throughout the state who make monthly reports on crop conditions and other items of information or interest to the farmers.

Conservation of natural resources

Under the head of conservation of natural resources may be grouped a number of related agencies and functions, although one looks in vain for such an administrative department in most states. Usually these functions are assigned to a number of separate departments, among them some of those already mentioned. In a few states some, at least, of these matters have been grouped in a department of conservation under a single or plural head. These fields of action, whether organically grouped or administered otherwise, include geology, mining, forestry, public lands, water supply and fish and game. In each of these fields the work may include both investigative and regulatory duties.

Functions:

1. Forestry

The forestry service of the states concerns itself with problems of the conservation of forests and of reforestation to replenish the rapidly diminishing lumber supply. Careful studies of types of trees, the effects of reforestation upon agricultural lands and upon flood conditions, and the propagation of types of trees suited for planting in the state are among the major activities of this service. No less than sixteen states have acquired at least one forest reserve, and in a few instances a large area of forest has been preserved for future generations.

2. Public lands

Closely connected with that of the forestry bureau is that which supervises the public lands of the state. The same agency investigates the water supply with a view to promoting means whereby disastrous floods may be avoided and at the same time an adequate supply may be assured in time of drought. In some states extensive

drainage projects are planned and their execution supervised by the same authorities. In as many as twenty-five states there have been developed systems of state parks of greater or less extent which in some instances are placed under the jurisdiction of the conservation department.

State geologists, as the name suggests, are engaged in studying the structure and properties of the soil and mineral resources of the state. Deposits of coal, building stone, oil and other mineral substances, as well as of earths having economic possibilities, are surveyed and the results made public. Laboratories are maintained for testing minerals and clays and discovering their possible industrial uses.

Widespread interest attaches to the efforts of the state in the propagation and protection of the game animals, birds and fish. Fish and game wardens patrol the haunts of wild life to see that the statutes for its protection are observed. Except for the species which are economically harmful, hunting is restricted to a brief "open season" each year and fishing is restricted in the same way.

Most of the states maintain fish hatcheries from which the stock of game fish in the lakes and streams is replenished. Some of the states also undertake the breeding of game birds with which to stock the fields and woods. In states bordering upon the Atlantic and the Pacific the activities of these authorities extend to the conservation of the shell and other fisheries in coastal waters.

Related to other forms of conservation, though usually not officially connected with them, is the work of the fire marshal. It is the duty of this officer and his deputies to inspect with respect to fire hazards buildings where the public congregates in large numbers, such as theaters, hotels, and assembly halls. Statutes or departmental rules prescribe safeguards such as fire doors and walls, fire escapes, outward-swinging doors, and sometimes fire drills by the regular occupants. In case of fires of unknown but suspicious origin, the fire marshal conducts investigations as to the cause, and if the fire is of incendiary origin seeks to detect and prosecute the offender. With the increase in the public taste for out-door life the loss from forest and grass fires has become very great. To combat this loss there has been developed an extensive system of forest patrols by fire wardens. In some instances watch towers have been set up and a constant lookout maintained to discover forest fires in their earliest stages. Aeroplanes are now being used for the same purpose and as a means of hastening fire-fighters to the scene where

3. Geology

4. Fish and game

5. Fire protection

fire breaks out. The forest fire service is variously placed, sometimes as an independent agency, and in other instances under the forest service or in the fire marshal's office.

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CHAPTER FOURTEEN

THE JUDICIARY

THE judicial branch of government is distinguished from the executive and legislative branches by the relation it bears to law. The legislative branch is said to make the law, the executive is said to enforce the law, and finally the judicial branch is said to apply the law. As has already been indicated in discussing the legislative and executive branches, this is stating the work of the various departments of government too simply. The functions of the judicial branch include several others besides that of applying the law. They may be classified into the following groups:

Functions
of the
judicial
branch of
govern-
ment:

The cases which come before courts or other judicial bodies are often such that the law which is to be applied to them is perfectly clear if the facts can be definitely ascertained. The judicial department attempts to learn the facts by letting the parties to the dispute state them, and also by allowing them to bring in witnesses to state facts. In most instances the courts do not attempt to determine which of the supposed facts stated in the course of the trial are the true ones, but make use of a body of men called a jury for that purpose. Their version of the facts is usually final. In cases involving a branch of law called *equity* the jury is sometimes dispensed with, and the judge himself or a person appointed by him called a *master* attempts to find out what the true facts are in a particular case.

1. To de-
termine
facts

The court is often placed in a very difficult position because it must try to do justice and at the same time apply the law. Contrary to the popular conception of the matter, the primary function of the judicial department is not to do justice but to apply the law to the facts presented to it. It is for the legislature to decide upon the question of the justice of a particular law as applied to most cases. But of course the judicial department does not apply the law without some regard for the element of justice. Whether a law is just or not will at least influence the judicial tribunal in deciding whether it should be interpreted to apply to the kind of facts which have been presented to it.

2. To
apply the
law to
facts

3. To decide what the law is

At times it happens that the rule of law which shall be applied is itself doubtful, or there may be several rules of law and even whole statutes which seem to apply to these facts, and these several rules may not be in harmony with each other. The legislative body may enact one law and custom may have established another, and the courts must decide which shall be applied. Or the state constitution and a statute passed by the legislature may not be in agreement with each other and the question of which of them shall be enforced must be settled. Those rules which have been established by custom and enforced by the courts in certain types of cases are collectively known as the *common law*. The court will usually look to see whether any case similar to the one before it has ever been before the courts of that state previously. It will follow a previous decision on the question unless the facts of the present case are so different that the application of another rule is warranted. Sometimes the court will refuse to follow the former decision because conditions have changed so much since the earlier case was decided that to apply the earlier rule would work hardship and injustice in this and other similar cases which might arise in the future. The doctrine that the court will usually follow the decision of previous similar or analogous cases is called the doctrine of *stare decisis*.

4. To prevent violation of private rights

Much of the work of the so-called courts of equity is concerned with granting orders known as injunctions, forbidding the threatened violation of some law or private right. The development of this phase of judicial work is comparatively recent. The early English courts had no power to prevent violations of either positive law or of private rights.

5. To administer property

In certain types of cases involving disputes over estates of deceased persons or the disposition of property belonging to a bankrupt person or business corporation, the judicial department administers the property until the dispute is finally settled. *Receivers*, *trustees*, and *administrators* are appointed to administer property under the direction of the court.

The first four of the above named functions of courts are usually performed in connection with the settlement of disputes, and the fifth one may also be performed as the result of a controversy, although this is not necessarily true. There would ordinarily be no dispute in the case of administering an infant's property nor in the settlement of an estate.

The function of the judicial department is sometimes said to be

that of settling disputes between private individuals. This is, of course, one of its most important tasks. But in state government in the United States this does not fully describe the various types of disputes settled by the judiciary. The state judiciary not only settles certain types of disputes between private individuals, but it also, in the second place, settles disputes between the government and private individuals. And in the third place, to these two types of disputes must be added those which arise between the various departments of the state government itself. The judicial branch of state government reviews the validity of statutes enacted by the state legislature. The constitution, by which the validity of legislation is to be measured, is sometimes vague and uncertain in its meaning. By choosing one of several different interpretations the court may exercise great political influence in the state. The need for some administrative supervision over subordinate officers of state government and the lack of power in the executive department to afford such supervision, has caused the courts to perform a portion of this work also. If any additional reasons for a thorough study of the judicial department of state government were needed, they would be found in the fact that, although this department is extremely important as a governmental agency, and to the people directly, the organization and work of the courts in many of the states is exceedingly defective. The inefficient operation of the judicial department in recent times presents one of the gravest problems of government now confronting the American people.

Courts are playing a rôle of ever-increasing importance in the everyday life of a large number of people. One is indeed fortunate in this day of automobiles if he has not been summoned to court at some time for the violation of some speed or parking ordinance or some one of the multitude of other regulations of downtown traffic. If a person has not been so unfortunate as to drive an automobile, he may have been the beneficiary of a recently deceased friend. Then, if he has not previously been in contact with judicial work, he may learn that there are special courts for the settling and administering of the estates of deceased persons. The business man knows the courts through the suits which he is sometimes forced to bring against his debtors or which he is called upon to defend against irate creditors. About the time that one feels he has been very fortunate indeed in not having been brought into court for one reason or another, he is summoned for jury duty. Or it may be

that he was riding in a street car which ran into and demolished an automobile and he was therefore called into court as a witness.

The great mass of cases which come before the courts in the routine of judicial work are brought into the state courts instead of into those of the federal government. The jurisdiction of the federal courts is quite narrowly defined by the federal Constitution or by congressional statute in most instances, and the types of cases which may come before them are rather limited in number compared with those which may be adjudicated in state courts. There are a number of cases over which state and federal courts have concurrent jurisdiction; and unless the case is removed from the state to the federal court before final decision, it is at last disposed of in the state court. Those cases which may be appealed to the federal courts on the grounds of some federal question being involved—that is, that some law of Congress, some treaty, or the Constitution of the United States is involved in the case—are of course excepted from this group. The United States courts usually follow the state court's interpretation of the laws of the state in which the particular case arises. The large majority of cases tried in state courts are finally settled there without reaching the federal courts at all. It should be remembered, however, that there are one or more federal courts in each state, and that both federal and state courts operate upon the same people. The Fourteenth Amendment has greatly increased the number of state cases which are appealed to the federal courts, but of these many more are affirmed by the federal Supreme Court than are reversed.

The courts have become of increasing importance in the conduct of state government and in the life of the individual, because of the growing demand that they join hands with the governor in keeping state legislatures within the bounds of the constitution, and because of the growing complexity of industrial and commercial life which has necessitated a more elaborate system of law for this complicated state of society. Since 1916, it has been possible for the state to appeal a case to the federal Supreme Court when a state law is declared by a state court to be contrary to the federal Constitution. Prior to that time the decision of the state court that a state law was contrary to the Constitution of the United States was final and could not be appealed from the state tribunal.

The courts are agencies of the state government for the enforcement of state policy as laid down by the legislature, although they are not directly concerned with the administration of the laws in

the same way as are officers in the administrative branch. It is the function of the courts to enforce the policy of the state through the application of the criminal law to persons brought before them and accused of violating the law. In a somewhat different sense the courts are engaged in the carrying out of state policy when they adjudicate private disputes, because state policy is concerned in part at least with the problem of fixing the scope and extent of the private rights of litigants, and the policy of the state varies from time to time in the treatment accorded these persons and their rights. Two factors contribute to make the courts figure to a greater or lesser extent in the enforcement of state policy. First, the judges are locally elected and are naturally influenced to some extent by the interests and views of that community. Second, juries are the judges of the facts and, in a few states, even of the law. These juries are locally chosen and are very likely to reflect in their verdicts the attitude of the community toward any particular policy which the state attempts to enforce. The cases are legion in which palpable violations of state statutes embodying the policy of the state go unpunished because of the unwillingness of local juries to enforce that policy.

Courts
and en-
forcement
of state
policy

The constitutions of many states contain detailed provisions for the organization of the courts. The tendency to include more detailed provisions regarding court organization has been only one phase of the general movement, to which allusion has previously been made, of placing in the constitution these provisions for the organization of the machinery of government, instead of leaving the creation of such machinery as seems necessary from time to time to the legislature. A determined effort is now being made to obtain for the legislature more power over the creation and change of judicial organization. It is hoped that the rigid provisions of many constitutions on this point will be eliminated before long, to the end that certain needed changes in the organization of the courts may be accomplished.

Organiza-
tion of
state
courts:

As organized in most states, the judicial system consists of courts arranged upon four levels one above another, although in some states the grades are but three.

At the base of the court system is the Justice of the Peace, an office of very ancient English ancestry. These justices are usually elected by the people in the towns or townships, or in special districts created for that purpose in the county. In a few states they

1. Justice-
of-peace
courts

are appointed by the governor.¹ They are not usually required to have any professional training and generally they have none. They are not always well educated men nor even men of any too high reputation in the community. In the villages and cities where they have not yet been replaced by a municipal or police court, the justices of the peace are more likely to have legal training than in the rural districts. They are not paid regular fixed salaries in most states but are dependent upon fees for their compensation; but a few states have recently attached a fixed salary to the office and have abolished the fee system. This is a desirable change in the office and will doubtless be effected in other states as time goes on.

Juris-
diction

The jurisdiction of these justice courts is fixed by statute in most states and is very limited. They are not courts of record, and, except where a jury is demanded, no jury trial is given. In many states no jury is provided for at all in these courts. The justice of peace usually has jurisdiction in both criminal and civil cases. His criminal jurisdiction extends only to cases involving misdemeanors punishable by small fines and short terms of confinement. He is also empowered to issue warrants of arrest, and he may sometimes be called upon to decide whether a person accused of a serious criminal offense shall be "bound over" to the court of general trial jurisdiction, that is, held for trial in the circuit or county court. The civil jurisdiction of the justice of the peace usually extends to cases in actions in contract or tort involving small amounts of money or property. The jurisdiction of justices of the peace normally extends over the whole county. Cases which have been decided in the justice court may be appealed to those of the next higher grade. When the case is tried in these latter courts, the proceedings which were had in the justice court are entirely ignored and the trial is held anew.

Adminis-
trative
functions
of
justice-
of-peace
courts

In addition to their strictly judicial duties, the justices are intrusted with certain administrative functions, particularly in connection with local government. This is especially true in the southern states. Justices are customarily authorized to solemnize marriages and to attest formal documents.

The justice courts handle a large number of cases each year. They come in contact especially with the poor, the weak, and the ignorant; and many thousands of such persons form their opinions of law and of the judicial branch of government on the basis of their

¹ SMITH, CHESTER H., *The Justice of the Peace System in the United States*. 15 California Law Review 118. On the method of selecting justices of the peace see the note on p. 121.

own or their neighbors' experiences with these courts. For this reason the justice courts are among the most important of all the cogs in the judicial organization of the state, and it is of the highest importance that justices of the peace be honest, intelligent, capable officers of the law. They should be legally trained, but it is of much greater importance that they settle the cases which come before them with more regard to the merits and sense of the situation than to the technical rule of law. They have, however, until very recently been uniformly neglected in any consideration of the judicial system of the state. There has been less change in the office and work of justice of the peace from colonial to modern times than in almost any other state office.

Importance of justice-of-peace courts

The manner in which the justices of the peace have performed their work has been anything but satisfactory. Much of the laxity in law enforcement can be traced to the favoritism which is often practiced by local justices. They have, as has been indicated, jurisdiction over the whole county and there are several justices in each community, all of them bidding for business. Due to the fee system of compensation, they are sometimes willing to make concessions to those who bring them business, and persons accused of petty crime brought before a particular justice are often convicted without regard to the merits of the case. The fine is usually small, and rather than engage in an expensive and slow procedure, the accused person pays the fine and costs and goes his way. There is a temptation for the justices to make agreements with officers of the law to bring offenders to their court for trial, with the result that the costs are split with the officer. The plaintiff in a civil suit is likely to win a case brought in the justice court because the latter is grateful for the selection of his court as the one in which to bring the suit. The justices are not immune to local political pressure, and miscarriages of justice due to such pressure are not infrequent. Because of this situation justice courts are held in low esteem in many communities. This in turn reflects upon the higher courts and the latter sometimes become the object of popular suspicion no matter how efficient, able, or honorable the judges who compose them may be.

Quality of work done by justice-of-peace courts

Above the justice of the peace and municipal courts there are to be found in every state courts of general trial jurisdiction. They are called variously district, county, circuit, superior, or common pleas courts. If a court is not created for each county, several counties are consolidated into one circuit and the judge of the circuit holds court in each county at fixed intervals. When a county is

2. General trial courts

large there may be more than one judge to take care of the work in that county. These courts have been important units in our judicial organization ever since colonial times and their organization and methods of work have changed very little since that time. In most states changes, if made at all, have been very recent.

Jurisdic-
tion

The jurisdiction of the general trial courts is both appellate and original. The appellate jurisdiction attaches to cases, both civil and criminal, which have been tried in the municipal or justice-of-peace courts, and, as has been pointed out previously, an entirely new trial is held in the county court in cases that are appealed from those of first instance. The original jurisdiction is usually very broad and also extends to both civil and criminal cases. Civil cases involving the great range of ordinary lawsuits are tried for the first time in these courts. With the exception of those cases which involve such small sums of money that they are tried in the justice or municipal courts, there is no limitation on the jurisdiction of the court based on the amount which may be involved in the cases. Cases of claims in contract, or tort, property disputes, and usually also cases in which redress by way of equity is sought, are heard by these district or county courts. On the criminal side, they try all criminal cases in the first instance which are beyond the jurisdiction of the lower courts in the community. The district courts make use of the petit jury to decide on the facts of the case, and the grand jury to present indictments to the court for violations of the criminal law. They are presided over by a regular judge who is either elected from the county or some larger district, or appointed by the governor; and they are called courts of record because a clerk is attached to each to keep the records of the proceedings and orders of the court. Judges of the general trial courts hold office for terms varying from four to six years ordinarily, although their terms of office are considerably longer in some states.

Adminis-
trative
duties of
general
trial
courts

These general trial courts perform probate functions in addition to their other work in those states where no separate probate court is provided for. In earlier days the court of quarter sessions, composed of the justices of peace in the county, found in many of the southern states, performed a large number of administrative duties in addition to its judicial work. Many of the states have separated judicial from administrative work and have now placed the latter type of duties with boards or commissions. There are still, however, a number of administrative duties quite commonly performed by judges of county or district courts. They are often

charged with the duty of receiving and acting upon petitions for the building of roads, the inauguration of drainage projects, the erection of county buildings, and the like. Some states make use of them to supervise the administration of poor relief, and others give them some share in the creation of corporations and in the supervision of elections. A few states have given them the power of appointing certain local officers and in a few others they are given authority to remove locally elected officers upon proper complaints or petitions. These nonjudicial functions place a heavy burden on judges of general trial courts and tend to involve them in politics, and at times impair the efficiency of the judicial work for the performance of which these judges are primarily chosen. Courts are not organized to perform administrative work, and the less of it imposed upon them, the better. It is difficult enough for courts to perform the administrative work which is incident to the settlement of many equity and probate cases, and they should not be burdened with purely political and nonjudicial functions.

The tremendous increase of appellate work has caused many states to create an intermediate court of appeals between the courts of general trial jurisdiction and the supreme court of the state. They are created for the purpose of preventing many cases from reaching the supreme court, and to that end are given final jurisdiction in certain types of cases. In Virginia the constitution provides especially for a court of appeals in case the press of business in the state supreme court becomes too great. These intermediate appellate courts pass only on points of law and do not make use of a jury.

3. Intermediate appellate court

The highest state court is usually called the Supreme Court, although in a few states it is known as the Court of Appeals, and in New York the Supreme Court is the name given to the intermediate appellate court. The state supreme court is one which confines its work entirely to the hearing of appeals from the lower state courts. Its original jurisdiction is not only narrowly limited, but its use is discouraged by the supreme court itself because of the press of business which arises on appeal. They are composed of from five to sixteen judges who sit either in divisions or as one court, and pass only upon points of law. There has been a tendency recently to increase the number of supreme court judges because of the steadily increasing number of cases which are coming before them. They do not make use of a jury. Their work is largely confined to the interpretation of statutes, the development and application of the

4. Supreme Court

rules of substantive and procedural law, and the determination of the constitutionality of statutes. The decisions of these courts are final except in cases involving a federal question, in which case an appeal lies directly to the Supreme Court of the United States. Occasionally one judge may hear a case alone, but such hearings are generally only on motions for temporary orders, and are subject to review by the whole court when it meets. The justices of the state supreme court are usually elected by the people, although, as will be noticed later, in some states they are appointed by the governor or the legislature. Where they are popularly elected they are often chosen from the state as one district; but in some states the voters at large elect one justice from each of a number of districts into which the state is divided. A few states have followed the plan of having the people of each district elect one or more justices from that district to the supreme court.

In order to take care of the increased appellate work of the higher courts, the supreme court in a few states has been organized into divisions, and only on most important cases does the court sit together as one court. In some states special commissioners may be appointed to aid the supreme court in disposing of pending cases, and in New York certain of the justices of the inferior courts may be detailed to sit with the court of appeals.

Work of
state
supreme
court

Cases which are appealed to the state supreme court are argued orally and also by brief, that is, in writing. When the oral arguments of the lawyers on points of law have been closed, the justices consider the case in conferences of the court, over which the chief justice presides. The chief justice is usually elected or appointed to the court as chief justice, and is the administrative head of the court, but has, like the other members of the court, only one vote in deciding a case. If the judges seem agreed as to how the case should be decided, the chief justice appoints one of the judges to write the opinion of the court in the case. This opinion is then read by the other judges, and after it is agreed to by them it is filed with the clerk of court and is subsequently published in a volume of opinions which is issued each year. Sometimes one or more judges disagree with the majority of the court and wish to put on record their reasons for dissenting from the view of the majority. These opinions are published as "dissenting opinions" along with the majority opinion of the court.

Miscel-
laneous
courts:

The justice of the peace courts have been replaced in many cities by police or municipal courts. Sometimes, however, the police court

is only one of several branches of an elaborately organized municipal court. Detroit, Chicago, Cleveland and several other of the larger cities have the municipal court organized as one court, with several divisions for the handling of specific types of cases. The police court usually disposes of violations of police ordinances such as those regulating traffic, and of other petty criminal offenses. Municipal courts in the larger cities have jurisdiction over civil cases which involve several hundreds of dollars, and criminal cases in which the punishment meted out is quite severe. The tendency has been to give to municipal courts a somewhat broader jurisdiction than is given to justice of the peace courts. But they do not have as broad jurisdiction as the general trial courts, which may also sit in the city. There are sometimes special county or circuit courts in addition to municipal courts in the city, and the jurisdiction of the several sets of these often overlaps. In the larger cities the tendency is to make the judgeship of the municipal court a salaried office and this tendency is also discernible in some of the smaller cities.

1. Municipal

Municipal courts are being organized in divisions for the purpose of specializing in the administration of law. Thus it may be that there is a night court for the trial of petty criminal offenders brought in during the night, or there may be a special women's court. There may also be a separate domestic relations and divorce court. All of these may be divisions of the larger organization, the municipal court. To guard against the danger that the judges may become too narrow on account of their administration of law in a specialized group of cases for a long period of time, provision is sometimes made for rotating the judges from one division to another at fixed intervals. Such a rotation brings a certain freshness and dispatch with it when a new judge takes over, or comes to aid in, the disposition of cases in a given division.

Usually, however, the municipal court is not so elaborately organized as this, and the various courts in the city are organized independently of one another with no provision for the correlation of their work. Many cities are now engaged in the reorganization of the municipal judicial system, and much improvement along this line may be expected during the next few years. Juvenile courts are sometimes a division of the municipal court, but are often separate. These courts have been established because of a popular demand that different and more informal corrective treatment be given to juvenile offenders against the law than that given to adults. The juvenile court tries cases in which children under sixteen or

2. Juvenile courts

eighteen years are the offenders. Boys or girls who are delinquents are brought before the judge who talks over their problems with them. He obtains from them, by winning their confidence, a frank statement, where that is possible, of the details of the act committed, with the attendant motives so far as that is possible. An investigation into the home life of the child may be undertaken. On the basis of the data thus obtained the child may be placed on probation or committed to a place of detention, often a school. Sometimes the court may find that the parents of the delinquent child are either unwilling or unable to rear and care for it properly, in which case a guardian is appointed for the child. In order to administer the work of a juvenile court properly and effectively, it is necessary that there be available a number of persons who are fitted and able to act as guardians or probation officers. A chief purpose in the creation of juvenile courts is that the child shall not be made to feel like a criminal but shall be subjected to kind and corrective treatment. Punishment in the ordinary sense is avoided except where it must be inflicted as a measure of last resort. The child may be forced to pay the damages which he has caused by his act, in order to make him realize the fact that he has committed an anti-social act and that someone has unjustly suffered because of the injury which he perpetrated. It is very essential that the judge of such a court be sympathetic with the problems of children and be personally able to gain their confidence. The formality of the ordinary courtroom and of a regular criminal trial is dispensed with because it is very important that juvenile first offenders shall not be made to feel that they are enemies of society. The formal criminal procedure of most courts tends to instill this feeling. The problem of administering the correction of juvenile delinquency is a perplexing one, and the detention and supervision of first offenders is one of the most important phases of the criminal work in the entire judicial system. The more effectively these courts perform their work and the more enlightened and thorough they become in their appreciation and understanding of the relation of child life and tendencies to criminality, the less will be the burden on the criminal courts of the future. An appeal from the finding of the judge is allowed to the higher courts in order that any tendency toward arbitrariness on the part of the judge of the juvenile court may be checked.

Just as the justice of peace courts are important in the smaller jurisdictions so the municipal courts are important in larger communities, because most of the people in a large city never come in

contact with any other than the municipal court. The fair and intelligent performance of its work is one of the best means available of insuring a respect for government and law on the part of the millions who constitute the heterogeneous population of modern cities.

In many cities the domestic relations or divorce court is a specially organized body or a division of the municipal court. Cases of divorce are adjudicated by, and the enforcement of the various decrees which are rendered in such cases effected through, the medium of this court. Alimony allowances are not always promptly paid. Formerly it was the custom to institute suits for the recovery of the moneys due the wife and children by the arrest and imprisonment of the offending husband. This method did not always insure the payment of the alimony. Because of this, criminal process is now instituted to force the delinquent person to make such payments for the support of the wife and family as the court may have decreed. These domestic relations courts usually attempt to reconcile husband and wife before proceeding to the formal trial of a divorce case.

3. Domestic relations court

Although the regular courts of general trial jurisdiction usually try most of the criminal cases which are too serious for the police or the municipal court, special criminal courts are now occasionally found in some cities. One objection to a separate criminal court is that it tends to make for a duplication of judicial machinery and overspecialization of work, as well as an overlapping of jurisdiction between the several courts in the same city. It is perhaps more desirable to have a division of the municipal court deal with criminal cases which are not serious enough to be taken to the general trial court of the county or district in which the city is located. Several of these general trial courts are often found in the larger cities, and for the most part are quite independent of one another.

4. Criminal courts

The county judges in many states take care of the probate work which arises in the county; but in a number of states a separate probate, surrogate, or orphans' court has been organized to administer this type of work in the county. The probating of wills is a highly technical and responsible task, and the amount of property and money which is under the supervision of the court is often very large. Guardians are appointed for orphans or insane persons, and administrators are appointed to administer the estates of deceased persons who have died without leaving a will. In each of these cases the officers appointed must make reports to the court concerning their work. When trust funds are left by a will the court must

5. Probate courts

6. State
courts
of claims

exercise a supervisory control over the administration of the fund by the trustees who have been appointed, and sometimes the court must appoint new trustees when a vacancy arises. In several states a probate judge need not be professionally trained in the law.

The states of the Union are immune from suit in the federal courts by citizens of other and foreign states by virtue of the Eleventh Amendment to the federal Constitution. This amendment has also been interpreted to mean that a state may not be sued in the federal courts by one of its own citizens. The only place where the state may be sued is, therefore, in the state's own courts. And it is a rule of long standing in Anglo-American public law that the state may not be sued in its own courts without its consent.

The constitutions of a few states forbid the state to be made a defendant to a suit in any court in the state. But almost half of the state constitutions contain provisions allowing the state to be sued and authorizing the legislature to make provision for such suits. Legislation is usually necessary to carry out these constitutional provisions, however, and the methods which have been used by the various states for settling claims made against them have not been altogether satisfactory. One method used in some states is to have claims presented directly to the legislature. That body may then authorize the payment of those claims which it thinks proper by an appropriation of money for that purpose. This method is not satisfactory because the legislature is not well fitted to determine the validity of such claims; and, moreover, if the number of claims presented was very large it would require too much of the legislature's time. In modern times, when so many states are embarking upon such elaborate construction programs which may involve matters both of contract and of tort, this method of settling claims against the state would seem to be inadequate.

A second method is for the legislature to authorize suits to be brought against the state in certain of the state courts. Under this method the legislature must still appropriate money for the payment of judgments of the courts before they would be satisfied. On this account and because of the technical procedure under which cases in the regular state courts are tried, it would not infrequently happen that recovery upon a perfectly proper claim would be defeated.

A third course which has been adopted in a few states is to establish a separate court of claims patterned after the federal Court of Claims at Washington and working under a simple and nontechnical procedure. A state which is likely to have a large number of claims

presented for payment about which there might be some dispute could well afford to establish such a court.

The fourth plan which has been adopted by a number of states is to have a claims commission or a board of claims which hears and determines the validity of claims against the state and makes awards upon the basis of its finding, such awards to be paid upon appropriation of the money by the legislature. Where such a board is established, the legislature should not interfere with the settlement or audit of such cases, but should usually act without question upon the recommendations of the board of claims. The New York legislature is forbidden to audit or allow any private claim, the theory being that if a board is to be established for the purpose of allowing such claims, such boards should adjudicate all of these and the legislative remedy should not be open to any dissatisfied person who has failed to secure an award on his claim from the board. Every state should make some provision for the settlement of private claims against it, for there is no greater moral justification for allowing the state to evade its just obligations than in the case of a private individual.

Delay and the high cost of justice in civil cases have created a demand for less expensive methods of settling disputes involving small sums of money. Foreign countries have experimented with courts of conciliation and small claims for upwards of a hundred years. The Scandinavian countries in particular have perfected a system of conciliation courts which succeeds in settling between seventy-five and ninety per cent of the disputes brought to them, without a formal judicial trial. Some of the middle-western states in this country have adopted the plan of conciliation courts, and the movement for the establishment of such tribunals is in full progress. The procedure followed in these courts is for the party who thinks himself aggrieved to state his grievance to the conciliator, who is sometimes a judge and sometimes not. Thereupon, the latter sends notice to the other party to appear at a certain date to state his side of the dispute. The conciliator then tries to settle the matter by suggesting that one or both of the parties concede something of their original claim. Usually the parties will agree upon some proposed basis of settlement. Lawyers are often barred from practice in these courts, and where they are allowed, the technicalities of procedure which characterize general trial courts are avoided. If the parties agree, the agreement, when certified and filed by the conciliator, has the force of a judicial decision. If the

7. Con-
ciliation
courts

parties cannot agree, they may take the case to a regular trial court. The procedure is informal, inexpensive, speedy, and nontechnical. Courts of conciliation are organized as special bodies in some states, while in others the judges of the regular courts are given power to act as conciliators.

8. Small
claims
courts

Special courts for the trial of disputes involving small claims exist in over half a dozen states. They are organized as branches of a municipal court in a few of the larger cities, but in most instances are entirely separate. Lawyers are sometimes barred from practice in them, the procedure is nontechnical, and very small fees are required of the parties to a case. Small claims courts represent another attempt to make justice available to those who most need it in cheap, simple, and summary form. The complaining party goes before such a tribunal, fills out a blank, deposits a few cents and thereupon can have the other party summoned to appear on a certain date. At the time fixed by the judge the parties meet and state their versions of the facts and the judge decides the case then and there without further delay.

Legal
aid
bureaus

Legal aid bureaus are another recent innovation. They have been in existence for several years in many cities as private philanthropic institutions. More recently a number of cities have provided for a legal aid bureau which gives legal advice to persons too poor to procure the aid of a lawyer, and which even furnishes the person with counsel if the case is thought worthy of it. Criminal cases are given over to a public defender, while the legal aid bureaus usually confine their activities to civil cases. Many divorce and bankruptcy cases, as well as many small cases in tort and contract, are conducted yearly by legal aid bureaus. Senior law students are often detailed to work for an hour or two each week with the legal aid bureaus as a part of their practice work in the law school. One of the greatest services of such institutions is that they are able to settle many petty disputes without the formality of a trial, thus relieving the courts of this burden.

Public
defender

Hitherto the state has not been expected to defend criminals, but to prosecute them. In recent years there has been a movement to provide accused persons with legal services in case they cannot afford to pay for their own defense. Courts have long been accustomed to assign an attorney to defend persons unable to secure the services of a lawyer, but this practice did not secure very satisfactory results. The person detailed to conduct such a case has no interest in the case and makes a very perfunctory defense. Therefore some

of the states have gone one step farther and have provided, as a public defender, an officer whose business it shall be to defend persons accused of crime who are not able to provide for their own defense.

The increasing tendency to make use of commissions to perform certain types of administrative and quasi-judicial work in the states has been touched upon in previous chapters. Certain of these administrative commissions have broad powers of a semi-judicial nature. Public utility commissions, workmen's compensation boards, industrial commissions, and others too numerous to mention have been given the task of determining questions and disputes of such a nature that their settlement would normally be expected to be by way of the courts. Indeed, these disputes were formerly settled by the courts, but, due to the technical character of the subject matter involved in many of them, the tremendous increase in the number of cases coming before the courts, and the inadequate facilities of the courts for this type of work, these cases have been given to administrative commissions of from three to seven men. They act partly in the character of a supervisor and administrator and partly in the character of a court, in dealing with the problems which arise in connection with public utilities and with many industrial activities. The members of these commissions are sometimes elective but more often are appointive officers. There is a tendency to formalize the procedure of their work and thus reproduce the very conditions the avoidance of which was a chief object of their creation. In many cases their findings are final and conclusive on the facts, though not so on points of law. Appeal on points of law is allowed to the courts.

Quasi
judicial
commis-
sions

In addition to judges there are certain other officers attached to state courts. They are the clerk of court, the prosecuting officer, the sheriff, and the coroner.

Officers
attached
to state
courts:

All courts except those of the lowest grade have clerks to keep records of their proceedings. In some states this individual is a special clerk for the court and in others he combines the work of clerk of court with the functions of a county clerk. The work of the clerk of court is largely ministerial and routine in nature, and for that reason he should be appointed by the court to which he is attached. This officer is, however, usually elected by the voters of the county. There is some tendency to make the office of clerk appointive, and in many of the higher courts he is now an appointive officer. The clerk also issues writs and legal process as prescribed by

1. Clerk
of court

statute, and is the custodian of the records and calendars of the court. Courts having a clerk are called courts of record.

2. Prosecuting attorney

One of the most important officers of the court is the one who acts as a prosecuting attorney for the state, county, and local governments. This officer is known by a variety of names in different states such as state's attorney, district attorney, prosecutor, county attorney, or commonwealth attorney, and is usually elected by the voters of the county or some larger district. The administrative phases of his work will be discussed in the chapter on Local Government, and only his duties as an officer acting in conjunction with the court will be considered here. The public prosecutor is the representative of the state in criminal trials, and performs certain functions in bringing criminals to trial. He also acts as counsel to the grand jury. To this body he presents cases which have come to his attention. Where the information is permitted as a substitute for grand jury indictment, he institutes proceedings against the criminal without the intervention of a grand jury. Not only does the public prosecutor make these preliminary investigations into crimes and cause offenders to be brought to trial, but he is empowered to dismiss the case against offenders by asking leave of the court to enter a *nolle prosequi*, with the court's consent. By determining what cases he wishes to present to the grand jury and by his use of the "information" and the *nolle prosequi*, the public prosecutor can influence greatly the administration of criminal justice in any community.

3. Sheriff

The executive officer of the court is the sheriff who is usually elected by the people of the county. He executes the sentences of the court, serves writs and orders of the court, and maintains order in the court during trials. The duties of the sheriff as an administrative officer engaged in enforcing state and local policy will be discussed in a later chapter on Local Government.

4. Coroner

The office of coroner is of very early English origin and was originally designed to aid in detecting the commission of serious crime. The primary function of the coroner at present is to determine the cause of death when any person dies by violent or unnatural means. The coroner usually summons a jury, called a jury of inquest, and in many cases their action is most perfunctory. It is questionable whether the office of coroner serves any useful purpose, as it is at present constituted. There has been a tendency in some states to replace the coroner by medical examiners and this would seem a more logical way of performing work of this kind.

It is very important that able and honest judges be chosen to

preside over the courts. The method of selecting judges in colonial times was by appointment, usually by the governor. The practice of appointing judges continued in the states under the first state constitutions, although the legislature often shared the power of appointment with the governor, and in some cases exercised the power alone. Legislative appointment gradually gave way to executive appointment on the one hand, and to popular election, on the other. Georgia was the first state to make use of popular election for the choice of judges. Beginning with that state in 1812, that method came into wider and wider use until now it is the one used in three-fourths of the states.

Selection
of judges:

Six states still select their judges by executive appointment, the governor being empowered to make the appointment with the advice and consent of his Council or the Senate. This method of selecting judges though somewhat prevalent in the east is not found in any of the central or western states. The reason for this is probably that the wave of democracy which swept over the country in the first half of the last century and manifested itself in the popular selection of most of the officers of government, affected the western states much more than the eastern ones, although several of the eastern states succumbed also. It is not possible to determine whether the requirement of the consent of a council or Senate is desirable or otherwise. The theory on which such a requirement is based is that the Senate should act as a check on the governor and prevent him from placing an obviously unfit person in the office. Irrespective of the requirement of senatorial confirmation, the recommendation and influence of the bar of the state is likely to be a powerful factor in causing the governor to make a wise choice. Moreover, the importance of the judicial office will usually insure a somewhat active popular opinion which doubtless influences the governor's choice to a considerable extent. Selection by the governor has proved to be very satisfactory in those states where it is used. Partisan influences are not entirely eliminated, and it is not clear that they should be entirely disregarded. But the more objectionable phases of such influences have been minimized in most cases so that flagrant partisan appointment is very uncommon.

1. Ap-
pointment
by the
governor

Judges are chosen by legislative appointment in four states, again all to be found among the older eastern group, although in one of them nomination is made by the governor. It has been assumed generally in recent years that legislative appointment is very unsatisfactory; but on the whole the courts of those states which use

2. Ap-
pointment
by legis-
lature

this method of selecting judges cannot be said to be decidedly inferior to those in which either executive appointment or popular election has been used. There are some obvious objections to choosing judges by legislative appointment, however, and it cannot be denied that this method was not satisfactory in many states when it was the prevailing system. The first objection which is advanced against legislative appointment is that members of the legislature are chosen primarily for other purposes than that of making appointments to office. A second objection is that since legislatures are political bodies, by an appeal to party loyalty the leaders may secure the endorsement of a man for the office who is not fitted for the position. The temptation to give undue place to political partisanship in legislative appointment is doubtless very great and constitutes a serious objection to this method of choosing judges.

3. Popular
election

Selection of judges by popular vote has been adopted in over three-fourths of the states, and the movement for popular election has spread to states in all sections of the country. No other country elects its judges, and even our federal judges are appointed by the President with the consent of the Senate. The pioneer influence was a very powerful factor in causing judges to become elective officers in the states, because the pioneer felt that the law-applying as well as the law-making processes should be controlled by the people through popular election of the officers who were to perform these functions. The political character and political influence of the courts were greatly increased by popular election, but it is doubted by most observers whether there was any corresponding increase in the ability and efficiency of the judges.

Elective
versus
appointive
judiciary

The elective judiciary has been severely criticized resulting in a recent revival of the agitation for an appointive judiciary in many states. Legislative appointment does not appear to be given serious consideration at present, and thus the choice seems to be between appointment by the governor and popular election. Opponents of popular election of judges argue that under that method judges are selected on a partisan basis. It is pointed out that judges are not essentially political officers, that party loyalty is not one of the requirements for an able judge, and that they should be selected on the basis of fitness for the office. Judges should be impartial and should not be swayed either by the passing political issues of the day nor by the temporary ebb and flow of popular prejudice. The claim is often made that under this method of choice party leaders determine the selection of judges in the same way that they do

candidates for any other office. The primary system of nomination seems not to have changed this situation greatly because the party leaders can influence the choice of the nominee almost, if not quite, as effectively in many states under the primary system of nomination as under the convention or caucus system. The statement is often made that the voters elect the judge; but, just as in the case of other elective officers, it is generally the party leaders rather than the voters who select him. It is very questionable whether the people can really select judges in some of the more populous states even if they wish to do so. In some cities the voter is asked to choose a half dozen supreme court justices and from eight to twenty municipal and general trial judges at one election. To perform a task of this magnitude intelligently would require much careful thought and study of the qualifications and personalities of the many candidates. Since candidates for judicial office rarely arouse as much enthusiasm as candidates for executive offices, and since the duties of their office are so highly technical, it is much more difficult to make the voters either interested or informed concerning the qualifications of the various candidates for judicial places. It is said that the best that the voters can hope to do is to follow the suggestions of the party leaders, except in those few cases where the voter has some particular information concerning some of the candidates. If it is true that in reality the voters merely ratify the nominations made by the executive, the bar, or the party leaders, then more attention should be paid to the methods of nomination than to the methods of election. These observations are also applicable to many of the administrative officers of the state, but are particularly true of judges. To obviate the objection that judges are elected as partisans, about half a dozen states have made use of nonpartisan ballots in judicial elections. A few states have changed the time for electing judges from that of the general election to a date when no other officers are to be voted for. The fact must not be lost sight of that judges cannot be entirely divorced from political matters in this country because some of their duties are of a semi-political nature, such as, for example, the administrative duties which many courts still perform, and, in particular, the exercise of the function of declaring laws unconstitutional. Because of this the people should not be wholly ignored in any discussion of the forces and factors which should be considered in the selection of these officers.

The practice in some states of returning judges to the bench as long as they wish to be reelected and so long as they perform their

work well has mitigated to some extent the evils which might be expected from a system of popular election. Notably honest and capable judges have, however, at times failed to obtain reelection despite a brilliant judicial record, because of party conflicts. In some states death or resignation is the only way in which a vacancy occurs. The governor in such case is often empowered to fill the vacancy by appointment, and at the next election the people will probably reelect this appointee to office. The bar has also exerted a great influence for good in the states using popular election of judges by indorsing certain candidates. The voters will naturally be inclined to pay considerable attention to the recommendations of the members of bar associations, because, after all, the attorneys of the state are the people best fitted to know the abilities and fitness of particular candidates for the office. It is the lawyers who come into daily contact with the judges and their work. Of course, it should not be forgotten that local bar associations may sometimes reflect the views of a few of the leaders of the bar, and that for some personal reason or because of some fancied mistreatment at the hands of a particular judge seeking reelection, the bar may be prejudiced in its stand. However, it may usually be trusted to be fair and just in this matter.

Comparison is often made between the elective and the appointive courts, and usually to the advantage of the latter. It is true that in some of the states in which the appointive system is used, the courts are of a very high grade; but it is not true that all of the elective courts are inferior to the appointive ones. Neither is it true that the best appointive courts are always superior to the best elective ones. If the appointive courts are excellent, it is probably due as much to the type of governor who has been chosen to make the appointments, and the traditions which have been developed in this connection in the particular state, as to any inherent excellence in the appointive system. Governors may be as unwise or dishonest as the electorate. If the people wish to have able judges, they can procure them either by appointment or by popular election. It may be more difficult to procure able judges by popular election, but that their services can be obtained has been adequately demonstrated. There is little probability that popular election will be replaced by gubernatorial appointment in many states for some time to come.

Many of the states are still primarily agricultural and it should be remembered that in such states the method of popular election is more successful than it is in congested urban districts. Since

popular election is more difficult to operate intelligently in the industrial and city states than in sparsely settled agricultural communities, it may be that a system of appointment may have to be devised for some of these states. It may even be that the appointive system will eventually come to be used to some extent in the less thickly settled states also. But if this does eventually happen, it seems likely that the appointive power will be lodged in a single elective justice or a group of elective justices, or in a judicial council of some sort. Various proposals looking to this method of obtaining an appointive judiciary are being agitated and in some urban communities are being tried out. Such a proposal would seem to take the appointment of judges as far out of partisan politics as possible, and also to insure primary consideration for ability and fitness rather than for vote-getting qualities.

The terms of judges vary from state to state and from court to court. There is at present a tendency to lengthen the term of office, particularly of the higher courts of the states. Selection for life or during good behavior is the rule in Massachusetts, New Hampshire, and four other states, while in eight states the term is from ten to twenty years. Six-year terms prevail in about one-third of the states. Judges in the courts of general trial jurisdiction commonly hold office for terms of from four to six years.

Terms of
judges

Long terms for judges are desirable, providing there is some adequate system whereby those who are not fitted for their work may be removed from office. It is very difficult to obtain the type of men who make able and efficient judges under existing circumstances; and if a short term is coupled with the other discouraging factors of compensation and the possibility of defeat in the next election, it is exceedingly difficult to attract to judicial positions men who are fitted for that type of work. The routine of judicial work is not easy to master, and it takes years of experience for the most able and conscientious of men to deal adequately with the problems continually presented to the court; and if terms be short and uncertain it will be difficult to maintain an efficient state judiciary. The longer the term the more impartial and independent the judges will be likely to become; and only by establishing a policy of reëlecting judges can the states hope properly to man the courts. Contributions to the party campaign chest are sometimes exacted from judges in the same manner that they are demanded of other successful candidates. On the whole it is surprising that the state courts have

been as able and efficient as they have, rather than that they have been mediocre.

Removal
of judges:
1. By im-
peachment:

The removal of judges may be accomplished by impeachment in all of the states. As was pointed out in the chapter on the legislature, impeachment is an unsatisfactory method of removing state officers. It has been used very rarely in the states.

2. By
governor
on legis-
lative
address

In many states judges may also be removed by the governor upon address of both houses of the legislature. The legislative resolution must usually have been passed by more than a bare majority vote, although two or three states require only such a majority. The causes for which a judge may be removed by this process are not usually specified in the state constitution, and this method is, therefore, somewhat more flexible than impeachment. By it the governor is not compelled to remove the judge but is authorized to do so if he wishes. This method of removal is not used very often, but it has the advantage over impeachment that it can be used to remove judges who are unfit for their duties although they have committed no specific and serious offenses such as are required for impeachment. Removal upon address is an *ex parte* proceeding and is not a judicial process; consequently no trial or notice need be given the person removed. But in practice it is common for the complaints to be written, and the governor customarily accords the judge a hearing before removing him from office. Removal by concurrent resolution of more than a bare majority of the legislature is provided for in about one-fourth of the states.

3. By
concurrent
resolution

4. By re-
call
election

Seven states make use of the recall for the removal of judges as well as other officers of government. The recall as applied to judges involves the same steps as when applied to other officers. A petition with the signatures of from ten to twenty-five per cent of the voters is required, and following the filing of the petition the question of whether the present incumbent shall be retained in office is submitted to the voters. Usually the recall may not be instituted against a judge until he has been in office for at least six months. Many arguments have been advanced against the application of the recall to judges, but most of the fears of the opponents of this method of removal have proved groundless in the light of past experience with it. No supreme court judges have been removed by this method, and those few judges of inferior courts who have been recalled have in almost every instance been removed because of charges affecting their personal character. The recall has not been used thus far to remove any judge because of his political views or

because of any political consequences resulting from any decision rendered by him. It is impossible to say that judges are any more hampered or controlled in their work in states having the recall than they are in states not having it. The theory of the recall was supposed to be that judges perform certain functions having important political results, such as declaring laws unconstitutional, and therefore should be subjected to popular supervision in the same manner as other public officers elected by the people. If the theory of elective judges is correct, there would seem to be no reason why the recall of judges is not also correct. This method of removal is not valuable for the constant use to which it may be put, but because it provides a method of removing a judge when the governor or the legislature refuses to do so.

A few state constitutions provide for the automatic retirement of judges when they attain a certain age. Seventy years is the age fixed in five state constitutions, although in one of these states the judge may serve longer if the legislature signifies its approval of his continued service after he has attained that age. The movement for pensioning judges has not as yet accomplished very much, but some statutory provisions looking to their retirement upon a fixed percentage of their salaries are to be found in a few states. The question of retiring a judge at a given age is very delicate, and it is almost impossible to fix a definite age at which all should be retired. Many people feel that judges become so conservative by the time they reach the age of seventy that they should be retired for that reason. However, that is not universally true, and, what is considerably more important, most of the work of judges is not political in its nature and is of such a character that experience in office adds more to their worth than is true in most other branches of public service. It may be, however, that when a judge has passed the age of seventy the exacting judicial duties of to-day are too strenuous for him effectively to perform.

Retirement
of judges

The salaries of judges are fixed in the constitutions of a few of the states. This is a totally indefensible method of fixing judicial compensation. About half a dozen constitutions specify the minimum salaries which are to be paid, and in a larger number of constitutions provision is made forbidding the decrease and sometimes the increase of the salary of a judge during his term of office. In the larger number of states the legislature is free to fix judicial salaries at whatever figure it wishes. The constitutional regulation of judicial

Judicial
salaries

as well as other stipends is very objectionable because it fails to recognize the constantly changing purchasing power of the dollar.

Judicial compensation should be considerably increased in most states. The item of expense which would result from doubling the salaries of most state judges would be negligible compared with the returns to the people of the state in the bettered quality of work performed by the courts. Of course, the problem of judicial salaries cannot be entirely divorced from the problem of tenure of office, but it is at least reasonable to expect that judges of higher ability would be secured if their remuneration were substantially increased. Judicial work is technical work, and if low salaries are paid for this type of work its quality is likely to be poor also. This observation is perhaps no more true of judges than other technical officers in the government, and it should in fairness be stated at this point that judges are on the whole better paid than are the professional and technical workers in the administrative branch of state government.

The salaries paid to judges in the state courts above the grade of justice of peace courts vary considerably from one state to another. Usually the judges of the supreme courts of the state receive from one to several thousand dollars more annually than do the judges of the courts of general trial jurisdiction. But between the amounts paid to justices of the supreme courts of the different states there is a difference so great that judges of this court in some states are paid eight times as much as those of some others. A typical salary for judges of the highest state court is from six to eight thousand dollars annually. The compensation of judges of the general trial courts range more commonly from four to six thousand dollars per year. The judges of state courts of record are almost always forbidden to accept fees, and must devote their entire time to their judicial duties. State judges as a whole have been regarded as underpaid, and in comparison with federal judges and those in foreign countries they are poorly paid. Few men will now accept appointments to the bench in the state unless they either have an independent income or are mediocre lawyers. However, it would be quite incorrect to say that this is true of all the men who accept judicial positions in the states, for in almost every state there are many judges of ability, and in the judicial history of practically every state there are to be found the names of very able and eminent judges. These judges have been able to exert great influence upon their brethren on the bench, and the result has been that the decisions of the courts of which these men have been members have been of a quality much

superior to that which would otherwise have been expected from the general make-up of the court. Such judges as Doe of New Hampshire, Mitchell of Minnesota, Shaw of Massachusetts, Cooley of Michigan, and many others, compare very favorably with the men who have graced the federal bench. On the other hand, the fact must not be lost sight of that the judges of state courts as a group are not highly trained nor always eminently qualified for their work. They have sometimes been quite unaware of the social, economic, and political implications of their work, and have proceeded with the task of deciding cases in a purely mechanical manner. The relation of the legal system to society as a whole has been too often overlooked by the court in many states, and to this fact must be ascribed in some part at least the present current contempt in which the legal and judicial system is held by many people in all walks of life. The defective general education of many judges has been one cause of this situation, and to the extent that state judges are more broadly educated men, the tendency in the future will be for the courts to perform more intelligently and effectively their work as one of the agencies of human society. The work of state courts in the past should not be too severely criticized, however, because the tasks with which tribunals have been confronted in recent years have been both numerous and difficult, and the facilities placed at their disposal for effectively dealing with these tasks have been quite inadequate.

The organization of the courts of the states has changed very little since the colonial period. The general outlines of the system remain the same, and only in very recent times have any radical changes in the judicial system of the states been seriously considered. State courts as originally organized were designed to serve a country which was essentially rural and quite sparsely settled. The number of cases which came before the courts in those early days was small, and the administrative problems then confronting them were few. Simplicity of organization and the keeping of judicial tribunals close to the people were prime considerations to be kept in mind in that early period. But the country has become more thickly settled and the complexity of the social, industrial, and political problems has greatly increased. The amount of work which now confronts state courts is tremendous. As has been noted earlier in this chapter, the growth of cities has raised troublesome problems in court organization, and many states are confronted with the problem of organizing

Problems
in judicial
organiza-
tion

a judiciary which will fit a state with both large urban areas and large rural areas, each of them requiring utterly different types of judicial organization. The multiplication of the records which must be kept by the courts, the preparation of jury lists, the supervision of probation and parole officers, the supervision of masters, receivers, and trustees, and the administration of the subsidiary and important auxiliary aids to the court, such as clinics and statistical departments, have put such an administrative burden upon the courts that they are unable effectively to perform their work in many communities. As the work of the courts increased, the conventional methods of providing for its care were (1) to multiply the number of judges of each court, (2) to provide a greater number of courts for a given community, or (3) to organize a separate court for the trial of particular classes of cases. These methods of affording relief from the increasing congestion looked only to that phase of the problem which concerned itself with purely judicial work, and did not address itself to the administrative problems confronting the courts. The thousands of statutes and decisions which are turned out each year by the legislatures and courts of the forty-eight states have naturally tended to make the burden of the purely judicial work very heavy, and the relief afforded even at this point has been entirely inadequate. The courts can no longer take days and weeks to deliberate over the pros and cons of a particular and interesting case, but must now decide more cases each month than were decided in a year in the earlier period of our history. They have no aid in searching for precedents and for checking up the law and citations contained in the elaborate briefs of opposing counsel. The result is that courts must rely to a great extent upon the industry and integrity of the members of the bar. Then, too, when new courts were established, little attention was paid to the relation of the work of the new creation to the work of those already existing. Overlapping of jurisdiction, insufficient work for some judges, and too much for others, resulted. Courts were independent of one another, and there was no unified central administrative control over the administration of justice. Some courts are from two to three years behind in the trial of cases on their dockets. Delay, which is so fatal to the administration of justice, is insured, not prevented. No real relief has come in the difficulty of handling the ever-growing number of appeals. The insertion in the state constitution of an increasing number of details governing the organization of the courts has tended

to magnify the already existing defects in judicial organization by rendering it more inflexible than it was before.

As a result of these conditions and many others too technical to consider here, a movement began a few years ago to secure some much needed reforms in judicial organization in the various states. Bar associations were slow to join the movement, and individual lawyers often opposed the proposed changes, but gradually it has gone forward. By its own merits it has attracted to its support one bar association after another, as well as the prominent members of the bench and bar of almost every state. These in turn have brought pressure to bear upon the legislatures to make such needed changes as could be made without constitutional amendment, and also in some cases have fostered the proposal of certain amendments to the state constitution which would make possible further needed reforms. Many of the needed changes can be accomplished through legislative action and do not necessitate constitutional change. Recent reforms in state judicial organization have centered about (1) the creation of a unified court, and (2) the establishment of a judicial council. The movement for a unified system of state courts has already accomplished much meritorious change in judicial organization and will doubtless accomplish much more in the future. The idea of a unified state court is slowly gaining ground. The proponents of this system would have all of the existing state courts organized as divisions or branches of a single large body. This consolidated court would work under the supervision of a chief justice or a judicial council. Along this line Ohio, Massachusetts, Nebraska, Louisiana, Missouri, and some other states have made more or less adequate provision for the consolidation of the judiciary of the state into one organization, with separate divisions of the general tribunal for the various communities of the state. The chief justice of the state supreme court has sometimes been made the chairman of the judicial council, and has sometimes been given the power to assign judges from one circuit to another where their services are needed. Members of the judicial council are representative judges from the various courts, supreme, appellate, and district. Provision may also be made for representation of the state bar association on the judicial council. It is the function of the council to study the work of court organization and to interpret the statistics on judicial work. On the basis of these the council will either make such rules for the organization of the business as seem necessary for the various courts of the state,

Movement
to
improve
court
work and
organiza-
tion

The
judicial
council

or will make recommendations to the legislature of the state suggesting needed legislation.

The functions or duties of the judicial council may be summarized as follows: ²

"1. From time to time recommend such changes in the law as it deems necessary; to modify or eliminate antiquated and inequitable methods of law and methods of administration, and to bring the law of the state, civil and criminal, into harmony with modern conditions.

"2. To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in our procedural law and its administration.

"3. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in our civil and criminal procedure and recommending needed reforms.

"4. To make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the common law, the work accomplished, and the results produced by that system.

"5. To secure statistical information concerning the operation of the courts, keeping an up-to-date record of how the various laws, rules and methods are succeeding, making the same available to the public in convenient form; to survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

"6. To submit such suggestions to the several courts as may seem in the interests of uniformity and the expedition of business.

"7. To report to the governor and the legislature at the commencement of each session such recommendations as may be deemed proper."

Some of the advantages of the judicial council may be enumerated as follows:

"1. Through the judicial council there is provided, for the continuous, thorough, scientific study of defects in procedure

² PAUL, *The Judicial Council Movement*. 1 *Washington Law Review* 101. On current progress in improving judicial organization and work, the publications of the American Judicature Society, Chicago, Ill., are invaluable.

and proposals to remedy those defects, a small, compact, yet representative body whose conclusions, by reason of the personnel of the council and the manner of investigation will carry weight with lawyers, the legislature and the people. It differs from a code commission in that it is a permanent body which can hold public hearings from time to time, and provides a medium for flexible actions which could not be secured through a code commission or any body which would make a special recommendation and then be discharged from further action. Furthermore, it is unlike a code commission in that no compensation is allowed to the members of the council, the only appropriation being for necessary traveling and clerical expenses of the members.

"2. If the council is composed of a cross-cut of judges and lawyers, a breadth of view will be obtained which, unfortunately, has been lacking in many previous attempts at judicial reform. Through its operation the judges will become active in measures for improvement of our legal procedure and if the judicial council functions properly the public as well as the judges and the lawyers will coöperate in the solution of our procedural problems.

"3. The official character of the judicial council should replace inactivity with action and initiative and, more than that, responsibility. Due also to its official character, leading members of the bar feel appointment to the judicial council desirable, and their appointment naturally gives weight to the council's findings.

"4. The council tends to prevent ill-advised, radical and undigested reforms and piecemeal, spasmodic or ill-advised proposals which have too often been presented, and sometimes adopted by the legislature. In the place of unscientific action, or no action at all, the judicial council proposes to act upon full information and to secure action from the legislature or from the judges on needed reforms of sound character."

The movement for the unification of courts has borne fruit in the reorganization of the municipal courts of several of the larger cities, and almost incredibly beneficial results have been accomplished in a very short time where such reorganizations have been effected along the lines of unification.

One of the greatest needs of courts at the present time is some

facility for gathering and correlating judicial statistics. The gathering of statistics which concern cases and problems which confront the courts has been entirely neglected until very recently, and very inadequate provision has been made in most states for this phase of judicial work. Courts must do more to-day than merely decide each case in a hit or miss fashion as it is brought before them, if they are to bear their portion in the work of government. Intelligent work of a purely judicial nature must be predicated more and more upon the analysis of adequate data which have been gathered and placed at the disposal of the judges. Nowhere is this more true than in the administration of the criminal law, but it is as true and probably as important in the more humdrum and uninteresting round of civil cases. This growing task of gathering the facts necessary to the intelligent decision of many cases has placed a vexatious burden on the judiciary. The suggestion is sometimes made that specialists in the business of gathering and arranging factual material should be attached to the courts. There is doubtless some merit in this suggestion, but much could be done toward solving this problem if judges would avail themselves of compilations of factual material made by trained employees of the various state administrative agencies. Still more might be accomplished if courts would ask these agencies for material on certain subjects before the court, and if the agency has no material readily available it might well be that a thorough and impartial study could be undertaken. Past reorganizations have only gone a small part of the way, but they are beginnings and doubtless point the way for future attempts in this direction.

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CHAPTER FIFTEEN

LAW AND ITS APPLICATION

THAT the primary function of state courts is to settle disputes has already been indicated in the preceding chapter. In settling disputes the courts are governed by certain rules and principles. These as they are administered by the courts or other properly constituted political agencies are collectively known as law. Law is one agency of social control. The sources of law are several in number.

The
nature
of law:

Sources
of law:

1. The federal Constitution is a source of law for state courts in so far as it contains rules and principles which must be followed by them. State constitutions especially contain rules and principles to which state courts must adhere. The federal Constitution is of course of higher authority than the state constitution, and if there is any conflict between them on any subject the latter must be disregarded on that point by the state courts. But both federal and state constitutions are paramount to laws passed by the legislature.

1. Federal
and state
constitu-
tions

2. The legislature of each state passes several hundreds of statutes at each legislative session. Many of these do not contain rules or principles which the courts need apply in settling disputes. As was pointed out in the discussion of the functions of state legislatures, a large number of statutes are of an administrative nature and do not deal with rules of private conduct at all. Statutory law is of course formally written and is sometimes referred to as the written law. The number of statutes enacted by the legislatures of the states is increasing from year to year, and the number and variety of rules which are contained in them is bewildering even to a lawyer.

2. Statutes

Some states have attempted to make statutory codes of rules covering whole divisions of the law. This has been done in all those branches dealing with negotiable instruments and with the sale of goods. A few states have attempted to make systematic statements of all the rules and principles which are to govern the relations of individuals to each other. It is very difficult to make such codes completely comprehensive, and although they sometimes serve as useful and surer guides for the judges in the settlement of disputes,

there remains the danger that they are likely to be too rigid. There will always be some situations which the framers of the code could not anticipate, and in these cases the judges will have to resort to custom and analogy to find the correct rule or principle to be applied to the situation. The most carefully drawn code will contain phrases which will require interpretation to determine whether they apply to the particular case in court. Some of the provisions will be vague and the courts will have to decide what they mean and what their boundaries are. The decision of cases can never become a purely mechanical process even under the most comprehensive code. United States statutes and treaties are also sources of law for state courts. Closely akin to statutes are administrative rules and regulations formulated by executive officers under constitutional or legislative grants of authority. These have the force of statutes.

3. Common law:

(a) As a body of law

3. The common law is a third source of rules and principles for state courts. It is very difficult to define the phrase "the common law." It is, perhaps, a method of legal reasoning as much as a body of rules. A brief sketch of its origin may serve to indicate its nature. When viewed as a system of rules and principles, the common law originally consisted of those particular rules which were recognized by the courts of England from time to time following the period of the Norman conquest. These were at first only customs of the people and had been applied in the local communities before formal courts had been established, and long before the conquest. The customs of merchants were gradually incorporated into the general custom recognized by the courts, and the feudal customs concerning land were also included to some extent. From these beginnings the courts gradually built up a comprehensive system of rules for the settlement of private controversies. Thus it is true that the common law is founded on custom; but only customs which were recognized and applied by the judges really became a part of the system. The process of introducing and including customs of the people and of business men in the law is going on constantly, and takes place before our very eyes.

The judges began very early to write down the settlement they made of cases which came before them, and as time went on they would naturally tend to decide similar cases which arose later in the same way as they had decided the earlier ones. The next step, if the earlier decisions in such cases were recorded and could be ascertained, was for the judges to look over the decisions of earlier judges and follow the rules established by them. But if the later

judge did not think that the earlier decision was just and fair he would not follow it.

It was only natural, however, if many earlier judges had decided a certain type of case in a certain way, that a later judge would be very slow to change that rule. As the rules became established and people came to know that they would be applied in certain kinds of cases, it became more and more difficult for the courts to refuse to follow the rules which had been established by their predecessors. That earlier decisions shall control judges in their decisions of similar cases is called the doctrine of *stare decisis*, and was pointed out in the preceding chapter. However, it should not be thought that the courts never changed these rules. They did so whenever they thought that the rule became too unfair in operation. This process of changing rules of law is still taking place. Sometimes the judges began to make exceptions to a rule, and these became so numerous that, although it was still enunciated as the rule, the exceptions had deprived it of any real effect. When the courts did not change the rules quickly enough to please the community, Parliament would step in and do so by statute. Such statutes had the effect of superseding any rules of the common law which were contrary to them.

The common law as it existed at the time of the founding of the American colonies was not adopted *in toto* by the settlers. In fact, it seems that many of the colonists thought that the common law of that time was very harsh, which was true to some extent. So in many instances they turned to other sources, particularly the Scriptures, for the rules and principles which were to govern the relations between men. Many of the early colonial bodies of law contain rules taken verbatim from the Bible. The early colonial judges were not trained lawyers and the colonists did not wish them to be. Not being such, they did not take kindly to the technical rules of the English common law; and it was not until several years after the American Revolution that courts in the American states turned whole-heartedly to the rules and principles of the English common law for guidance. But even then they did not accept all of the rules of that body of law. They adopted only those rules which suited them and seemed applicable to the pioneer conditions then existing in this country. Some of the earlier statutes of Parliament which had become thoroughly embedded in the English system were also adopted, sometimes by the courts and sometimes by the legislatures. It is stated by some courts that all the rules, principles

Common
law in
United
States

and statutes which were in force in England and applicable to the colonies at the time of the forming of the Virginia colony in 1607 are also in force in the American states unless they have been expressly repealed by the state legislatures. Other states fix the date at 1776. American courts at the present time often examine English decisions rendered prior to 1607, and even down to the present time, to see if the courts have passed upon a particular situation which is confronting an American court. These English decisions are not binding on American courts, but are always of persuasive force. A few states have formally abolished the English common law on certain topics such as crimes; and in Louisiana the French civil law, although in somewhat modified form, is used in settling civil cases. The statutes passed by the state legislatures are binding upon the courts, and if there is one rule of law established by judicial decision and a quite different one set up by legislative act, the courts must apply the rule established by the legislature. Just as constitutions are superior to statutes, so the latter are superior to the common law. But the courts will always attempt to harmonize the two rules unless there is a clear and irreconcilable conflict between them. The courts are prone to interpret the words of statutes in the light of the common-law meaning which has been attached to them as they have been used in decisions of courts preceding the passage of the statutes. The common-law system is not in force in the federal courts because the federal government has no authority to make rules other than those necessary for carrying out the powers delegated to it, and has no authority to adopt a comprehensive legal system governing the whole range of relations between individuals. The only time when federal courts enforce common-law rules and principles is when they are enforcing state law in cases coming before them because of diversity of citizenship, that is, when the parties are citizens of different states. But it should be observed that in the federal courts, as well as in the courts of those states where portions of the common law have been wholly supplanted by statutes, the common law is used to interpret many rules and phrases found in statutory enactments.

(b) As a
method
of legal
reasoning

If a new situation arises, one that has never confronted any court before, the court will try to reason by analogy or from some general principle of the common law and attempt to find out what is a reasonable and fair decision in such a case. The common law, therefore, may well be said to be a system of reasoning, as well as a system of rules. Both analogous rules and situations are considered

in attempting to settle new cases. The judges must always try to decide upon a fair disposition of the particular case, and they must also be careful that the rule they lay down will be a fair one when applied to other similar cases which may arise in the future. The desire of courts to avoid contradicting well-established rules is a third factor in the settlement of new cases. These three factors make the work of the judge in deciding cases very difficult. If he pays too much attention to the particular case before him the rules will become uncertain in application; if he is too greatly interested in the formulation of a uniform and certain rule for the future, an injustice may be done in the case being tried. It is difficult properly to balance these factors, but unless this is done the rules and principles which we call law fail to serve as an effective agency of social control. Many people fail to appreciate this and are apt to become impatient with the rules of law applied by the courts in certain cases. It is true that courts are sometimes too slow to change legal rules, and that at times they are too mechanical in applying the rules. But it should be remembered that the rules and principles which constitute the prevailing system of law must be at all times nicely geared so as to insure not only change and progress, but also a reasonable degree of certainty and stability. Law must move forward and give an appearance of standing still at the same time. A business man could not afford to incur the risk involved in continuing his business if he could not know what his rights and privileges were to be in the conduct of his business. There must be some certainty in them. On the other hand, if these rules did not gradually change they would become a hindrance to business because it is continually changed and requires new and modified rules of law. It is one of the advantages of the common law that it is flexible and can be altered as conditions demand it, and at the same time can remain fairly stable because of a reasonable application of the doctrine of *stare decisis*.

Certainty
and flexi-
bility in
the
common
law

The common law developed slowly and did not afford adequate remedy for every wrong which might be committed by one person against another. Two defects particularly became apparent. First, it did not give any relief against threatened wrongs. The only remedy known to the common law was to make the wrongdoer pay money damages for the wrong after it had been committed. But certain threatened wrongs, if committed, could sometimes be only inadequately compensated for by money damages. It was sometimes impossible to fix in terms of money the amount of damages

Rise of
equity

which had been suffered, and because of this, injustice often resulted. A second defect in the common law was that only certain kinds of wrongs were redressed, namely those which had been recognized by providing writs for their redress. A writ was an order giving the court authority to settle a particular case. These orders were issued by the king through his officers. If no writ had been provided for a certain type of wrong, the injured person had no remedy. Because of these two defects in the common-law system, the king began to afford special relief in those cases which could not be adequately settled by the common-law courts. He acted through his chancellor who was often a churchman, and this official would give special relief by issuing orders where no remedy was available under the common law rules and principles. Finally, these special orders or writs and the system of rules which grew up about them came to be administered by special courts established to dispose of such cases, and came to be known as equity. The principles thus developed and applied are commonly called equitable principles. Equity was not limited to the remedies and technical rules of the common-law courts, but its rules were formulated to do justice according to the principles of ethics; and a fair disposition of the particular case was looked upon as the important goal to be attained. For this reason it was sometimes said that the court of equity was a court of conscience. As time went on, the tendency was for the system of equitable rules and principles to become somewhat fixed; and in time equity became as rigid as the common-law system which it was originated to supplement. The desire for stability in the administration of equity caused the chancellor and the courts of equity to begin to follow precedent and to try to avoid making the measure of justice which was meted out in these courts so uncertain.

For many years the system of equity which was brought to the United States from England along with the common law was administered, as was the case in the old country, in different courts from those which applied the common law. This was not satisfactory because the equity and common-law courts often engaged in disputes over the question of which of them should try certain kinds of cases, and also because a person could not be sure in which of the two courts he should bring his case for trial. At the present time most states have remedied this situation by providing that both equitable and common-law remedies shall be administered by the same court, although the procedure for each type of case is different. But if a person seeks relief in the wrong court

at the present time he need not go to another court. He need only change his pleadings so as to comply with the formalities prescribed for presenting a common-law or an equity case. Only a few American states, of which New Jersey is one, maintain separate courts for the trial of equity and common-law cases.

A person may go into a court asking equitable relief when he cannot get relief at common law or when the relief which he can get there is inadequate. Thus, for example, if a person threatened to dam up a stream which ran through a neighbor's land with the result that his cattle and crops would be irreparably injured by drought, the neighbor could go to court and, upon a proper showing to the judge, get an order issued which would command the person threatening the injury not to commit the anticipated act. So too, if a group of people threaten injury, and there is no adequate remedy against them as a group, or it would be necessary to sue so many individuals to obtain damages because each of the wrongdoers was financially irresponsible, an order may be obtained from a judge commanding the group not to carry out the threatened action. Such an order in either of the above cases is called an *injunction*. These orders are often issued in labor disputes, and some dissatisfaction has been manifested in recent years with the liberality with which some courts issue them in such cases. If a person disobeys an injunction he is tried for contempt of court and does not usually have the right to a jury trial, but the judge in his own discretion fines or imprisons the offender. This is a severe and summary method of punishment and is very effective in preventing the threatened injury in most instances. In a few jurisdictions jury trial has been provided for in such cases as these where injunctions have been violated, but relatively few states have adopted this innovation thus far.

But equity does not act merely in a negative way. It also provides positive relief in case a person is committing an injury to another through a failure to perform some act which he ought to perform. For example, one person may make an agreement in writing with another for the purchase of a piece of land particularly suitable for the certain purpose for which it is to be used by the purchaser. If the vendor then refuses to give a deed to the land in accordance with his agreement, the purchaser can go into a court of equity and procure an order commanding that the recalcitrant person must give a deed as he agreed. If he does not do so, the same penalty can be visited by the court as in the case of violating an injunction. This is contrary to the usual rule of the common law governing

breaches of contracts. Ordinarily if a person breaks a contract the only penalty he must pay is money damages to compensate for the loss which he has caused the other party. But in the case of the sale of a particular piece of land there might be no satisfactory way of compensating by money damages, and it might not be possible to say what the damages would amount to in a particular case. What the man wants is the land, not money and no other land which he would be able to buy might serve his purposes. Hence, because it is unjust to try to fix damages in money in such cases, equity decrees that the title to the land must be transferred in accordance with the agreement. Thus it is that equity may offer positive as well as negative relief.

Classifica-
tion of
the law

Rules of law are classified for purpose of convenience into various groups, depending upon the nature of the subject with which they deal. In a few cases, however, there is no particular logic in the classification made and it can be accounted for only by reference to historical considerations. The rules of law may be classified into two large groups called the *civil* law and the *criminal* law. Not all of the wrongs committed against individuals are of such social significance that the state needs to step in to punish the wrongdoer. Many wrongs are not serious enough to merit state intervention. In such cases the state merely furnishes impartial tribunals to decide the disputes which arise between individuals. Many minor wrongs are considered to be of such slight social significance that the state does not even open its courts for their redress. Other violations of people's rights are so serious that the state finds it necessary itself to punish the wrongdoers, because society demands greater protection from them than is afforded by merely allowing one person to sue another for the wrong done. Acts which are of such social significance that they are punished by the state are called crimes, and the rules concerning them are called the criminal law. Acts which violate some personal right which is not considered of enough social significance to merit state action but which the individual may bring before the courts, are called civil wrongs, and the corresponding rules are known as the civil law. The subdivisions of the civil law will now be considered.

Civil law:

1. The
law of
property:

The rules of law which have been developed to protect private property are very technical and complicated. Property in law does not consist of "things" but of rights. One owns the right to use and dispose of a piece of ground or a chair, but the property is not the chair or the ground itself, as is so often supposed. In popular

speech however, we call the thing itself property. Property rights are divided into two classes, depending upon the kinds of material things to which these rights attach.

(a). Real property consists of rights as to the acquisition, use and disposal of land. There is a borderline between real and personal property where it is difficult to tell whether the rights in a thing are personal or real; but the general distinction between them is that the rights which a person has in land and in things permanently attached to land are real, while rights in movables are called personal. Sometimes one has certain claims or rights to, or in, the land of another person, such as a right of way over his neighbor's land. Such rights are called incorporeal rights as distinguished from corporeal rights, and are a species of property. (a) Real property

A person who buys the lot on the next corner does not "own" that piece of ground which we measure off and call his. All that he owns is certain rights to use and dispose of the land; and the largest bundle of these rights which any person can have in a piece of land is called a "fee simple estate." The interest or right which one has in land is called an "estate." There are other estates which do not carry with them as many rights as that in fee simple, nor do they last for as long a time as in the case of that estate. Examples are estates for life and for years. "Dower" is the estate which the wife has in the lands of her husband and "curtesy" is the estate which the husband has in the property of the wife. Both of these are life estates. Rights of dower and curtesy have been modified by statute in many states.

(b). We have noticed that personal property embraces those rights which people have in movable things. There are various classes of these rights, such as (1) leases of lands or buildings, (2) rights in ordinary movables, (3) choses in action, which are claims against persons or corporations, such as that held by a person against another who has broken a contract with him, and (4) rights included in patents and copyrights. (b) Personal property

There are many rules regulating the inheritance of property upon the death of the owner thereof. Certain rules govern the disposition of the property if a will is made, while others govern if there is no will. The making of wills, as well as their construction, has been the subject of an entire branch of the law of property.

If Jones steals Smith's automobile, Jones has committed a crime and is liable to prosecution by the state. But Jones has also committed a wrongful act against Smith, and the latter does not have 2. The law of torts

to be content to see Jones fined a certain sum for taking his car. What Smith wants is the return of the car or its equivalent in money. So the state permits Smith to come into court and have his claim against Jones tried under the civil law and the amount of money which Jones shall pay him decided upon. The wrong which Jones has done Smith by stealing the latter's car is called a *tort*. It is impossible to enter into a detailed analysis of each of the acts which one person may commit against another which will constitute a *tort*. Some of them are directed against the person, as false imprisonment, assault and battery, abduction of child or wife, adultery, alienation of affection, and defamation. Defamation may be either oral (slander), or written (libel). Other torts are wrongs against both persons and their property. An illustration of these is a nuisance such as factory smoke which not only inconveniences persons a great deal but also seriously affects the uses to which their property may be put. In certain cases nuisances can be stopped or "abated" upon proper complaint. There are still other torts which consist of wrongs against property alone. The most important of these is perhaps that of trespass, which is the disturbance of a person in the possession of his property.

It should not be thought that an injured person can recover damages from a wrongdoer for every wrong which the latter may commit. There are many instances in which the injured person is as much to blame as the one who committed the act, and in such cases no recovery is allowed. Where the injured party is himself partly to blame or is negligent, his claim against the wrongdoer is nullified. There are also many acts which are morally wrong but which are not recognized as such in law; and there is a continual change in our ideas as to what particular wrongs of this kind ought to be considered so at law. The law is recognizing an increasing number of acts which have been considered wrong from a moral standpoint for a long time, and the persons injured by the commission of these acts are given legal redress in the form of money damages. For example, as the law now stands, an able-bodied man may stand by and watch a three-year-old child drown when he could have saved it by reaching out a hand. This would surely be considered a moral wrong but is not a legal wrong at the present time. The time may soon come, however, when such a failure to act will be considered legally as well as morally wrong.

When Jones and Smith make an agreement of a certain kind, and containing certain essentials, we call the legal relationship which

results from it a contract. The agreement itself is not, as popularly supposed, the contract, but the law attaches certain importance to given types of conduct, and as a result of the agreement made by the parties, a certain legal relationship is established between them. If, then, one of them does not do what he promised the other can sue him in a court. These rights, which are the gist of the legal relationship arising from this particular kind of conduct, are classified as contract rights. The technical rules which govern the making and enforcing of contracts cannot be considered here, but it should be kept in mind that a large group of cases continually come before the courts which involve breaches of this legal relationship. There are special kinds of contracts to which certain special rules have been applied and which form the basis for separate courses of study in law, such as for example, negotiable instruments, suretyship, contracts for sale and of sale, and insurance contracts.

3. The law of contracts

Individuals often wish to combine for the purpose of carrying on certain types of commercial activity. The two most common types of business organizations are corporations and partnerships. A corporation is thought of in law as a legal entity. Thus, if ten people combine to carry on a business and form a certain kind of business organization called a corporation in conformity with the laws regulating the formation of these organizations, they form an eleventh legal person, distinct from the ten but including the ten. This "it" is the corporation, is suable, and has certain rights, just as natural persons have. It is usually endowed with a certain period of legal life fixed by the charter. The members of a corporation may change, but the corporation endures for the period fixed in its charter; and because of this continuity of existence regardless of the existence of its members, the corporate form of business organization has become very popular during the past century. One of the advantages of this form of organization is that the ownership of the "it" is divided into many parts, each called a share of stock, evidenced by a certificate, and the money with which to run the business can thus be gotten from various sources through the sale of these evidences of ownership.

4. The law of business organization:

(a) Corporations

A partnership is another form of business organization and differs from a corporation in several ways. The partnership is dissolved as soon as one of the members drops out. The debts of the partnership firm are also the debts of each member. This is not so in a corporation, for there each man usually is, with a few exceptions as in banking corporations, liable only for the par value of his share of

(b) Partnership

stock. There has been much discussion as to whether a partnership is a legal entity apart from its members, and the question has not been definitely settled as yet, although it is at present not treated as a legal entity by most courts.

5. The
law of
domestic
relations

A number of rules have been evolved by courts and legislatures regulating family relationships. The duties of husband and wife, their respective rights in the property of each other, and the rules governing the status of marriage and divorce are all regulated in detail by statute in most states. The relations existing between parents and children, as well as between children and their guardians, have also been the subjects of many legal rules.

The foregoing are only some of the more important divisions of the civil law, but they will serve to indicate how widely human actions and relationships have come under legal regulation. It should be noted that the tendency is to increase rather than lessen the complexity and scope of legal regulation of the individual and the group, and relations between the two.

Procedure
in civil
case:

Thus far only the substantive rules of the civil law have been mentioned. The next problem to be considered is the procedure whereby these rules are enforced. One of the purposes for which courts exist is to enforce legal rights which have been granted to individuals. As has been pointed out in a previous paragraph, the prevention of the threatened violation of a legal right is the peculiar function of the courts exercising equitable jurisdiction. But the redress of rights already violated must be sought in courts administering the ordinary rules of civil law as formulated in constitutions, statutes, or the common law. As noticed earlier, most states now have one system of courts for the administration of both equitable and ordinary civil relief. The procedure whereby a person secures redress for the violation of some civil right granted by law is now largely regulated by so-called codes of civil procedure. The procedure at common law in trials under the system of writs mentioned earlier in this chapter was very technical and dilatory. Many of the technicalities of the old common-law procedure have been abolished, and civil procedure is being simplified gradually in the interests of speedy and effective justice, although much still remains to be done along this line. The procedure in civil cases as outlined below is in general that which is provided for in modern codes.¹

¹ CALLENDER, CLARENCE N., *American Courts*. This work contains an interesting and nontechnical presentation of the organization and procedure of state and federal courts. See also WILLIS, HUGH EVANDER, *Introduction to the Study of Anglo-American Law*, and MORGAN, EDMUND M., *How to Study Law*.

The person who claims that some right of his has been violated and who commences the suit before the court, is called the plaintiff. He begins his lawsuit by writing out a statement of the facts alleged to constitute the violation of his right. This document is called a complaint and is filed with the court. A copy of it is served on the person who is alleged to have violated the plaintiff's right and who is called the defendant. The defendant must answer the complaint within a certain time, and in answering may deny the truth of the statements set forth in it. If he does that, there is an issue of fact to be tried by the jury. The defendant may admit that the plaintiff's statements are true but deny that they constitute a ground for a lawsuit. This is called a *demurrer*, and the judge instead of the jury must then decide whether the facts set forth do or do not constitute a violation of a legal right. The plaintiff in turn may demur to the answer filed by the defendant, and claim that the answer does not constitute a justification or a defense. Most codes place a limit on the number of these interchanges between the defendant and plaintiff, but at the common law the pleadings were continued until some issue of fact had been agreed upon by the parties.

1. The complaint

2. The answer

3. Selection of jury

When the defendant's answers are in and the last papers have been filed with the court, the case is ready for trial. If an issue of facts exists and the parties wish a jury, they usually have a right to have one impanelled, providing the amount involved in the case is great enough to meet the requirements fixed by statute. If the suit is in equity, the judge passes on the facts without the aid of a jury although he may summon a jury to help him if he wishes to do so. If the parties agree to waive a jury in civil cases they can usually do so. Many cases are now tried in which this is done, because they wish to have the case settled without delay and also because they distrust juries and have more faith in the intelligence and honesty of the judges.

In case a jury is demanded, a number of persons are summoned from the panel, or list of persons, which is made up by the sheriff, the clerk of court or a special jury commissioner. Those persons unfitted to serve for some reason or other may be excused from jury service by the judge. The lawyers for either side may also object to a certain person as a juror because of prejudice or some other disqualification, such as relationship to one of the parties or pecuniary interest in the case, and this objection is called a challenge. The trial is ready to begin when the jury has been sworn in.

The plaintiff's lawyer usually opens the trial by describing to the

4. The
trial
Exami-
nation of
witnesses

jury the general nature of the complaint which he is making, and outlining some of the facts which he expects to prove. The witnesses are then called, and are first directly examined by the plaintiff's lawyer, and then cross-examined by the lawyer for the defendant. When all the plaintiff's witnesses have thus been examined, the defendant calls his witnesses, and these are first examined by the defendant's attorney, and then by the plaintiff's attorney. The kinds of questions which are permissible and the manner in which they may be framed, are strictly regulated by the rules of evidence. After the defendant has presented his testimony, the plaintiff may call witnesses by way of rebuttal. The defendant may do the same, and this is called surrebuttal. The attorneys then make their speeches, or pleas, to the jury.

Speeches
to jury

Judge's
charge
to jury

Following the closing arguments before the jury, the judge usually charges them as to the rules of law which govern the type of case being tried, and directs the jury to adjourn to a room wherein they are to reach a verdict, *i.e.*, to determine whether the plaintiff or the defendant shall win. It may be, however, that the jury is not allowed to decide the facts of the case at all, because after the testimony is presented it may be clear that no semblance of a case has been made out by the plaintiff. If this is true, the judge may dismiss the case and the plaintiff loses. Or the judge may direct the jury to find a certain kind of verdict, because the evidence allows only one conclusion to be drawn. But in most cases the facts are left to the jury, and they must decide whether the plaintiff's story is true or false, and then determine how much damages the plaintiff shall be awarded if the latter has really been injured by the violation of some legal right. Sometimes the jury cannot agree on the conclusion to be reached, and if an agreement cannot be reached within a reasonable time the case must be retried before another jury. In many states the verdict of the jury need not be unanimous, although the unanimous verdict was the rule at common law. Two-thirds or three-fourths of the jury are a sufficient number to decide the case in several states now, especially if the case does not involve large amounts of property or money. The number of jurors required at common law was twelve, but six- and eight-men juries have now been introduced in a number of states for smaller cases. Women are now eligible to jury duty, and many of them have served on juries in recent years.

Jury
delibera-
tions

Referee

Sometimes the facts are very technical and complicated and the judge in equity cases appoints a "referee," called a "master" or

"master in chancery," to take the evidence or testimony, and make a report to the judge on his findings. When juries are not used, this is often done. The judge then makes his decision on the basis of the referee's report, but he need not follow his recommendations, although he is likely to do so in most cases if the referee has done his work well.

There has been much dissatisfaction with juries in civil cases in recent years. Many business men prefer to submit their cases to the judge without the aid of a jury and allow the judge to decide upon the facts of the case as well as the law applicable to those facts. Juries are not always composed of well-educated, nor even intelligent, men. Many of the questions which they must settle depend upon information and testimony of a very technical nature. It is often true that expert testimony is presented to the jury which most of the members of the jury can hardly understand. In such cases as this the verdicts are likely to be the result of mere guess or prejudice. Another objection to juries is that they cannot rid themselves of deep-seated prejudices prevalent in the community or common to people in the particular vocation in which some of them may happen to be engaged. It is a notorious fact that in some sections of the country juries are prejudiced against certain commercial corporations, and in the middle-western and northwestern states railroads are particularly liable to be the objects of such prejudice. For these and other reasons jury trial is made optional for certain types of cases in many states. But either party may usually demand it if they wish.

Defects
in jury
work in
civil
cases

If one of the parties to the suit is not satisfied that the decision of the judge on some point of law was correct, he may appeal the case, that is, have the law on that point of the case passed upon in a higher court. The questions of law may either be on the evidence which was admitted or on questions arising out of the conduct of the trial. They may also be questions relating to the rules of law applicable to the state of facts found by the jury. If the losing party in the higher court is not satisfied, he may under certain conditions appeal the case still higher, until the supreme court of the state has finally settled the point. It may happen that the case will not reach the supreme court of the state but that final disposition of it rests with some intermediate appellate court. The appellate courts never pass upon the falsity or the truth of the facts alleged to have been established at the trial, but confine themselves to decisions on points of law. If new questions of fact arise during the proceedings before

5. Ap-
peals

an appellate court, the case may be sent back to a trial court to have these facts determined. The higher courts do, however, have power to pass upon the question of whether the evidence warranted the verdict at all, because sometimes the juries will award damages to the plaintiff even though the evidence is clearly contrary to such a verdict.

If the appellate court which finally disposes of the case affirms the findings of the trial court, the case is at an end. But if the higher court reverses the decision of the lower court, the case is usually sent back again to that body for an entirely new trial. Then if the decision is not to the liking of the other party, he in turn may also appeal, and go through the same procedure outlined above. The system of appeals as it now operates in many states is very costly, and a great deal of time is consumed in the final disposition of the case. From two to four years not infrequently pass by before the dispute is ended. Ten or even twenty years will sometimes elapse before the case is finally decided in exceptional cases. This means that a poor man may be defeated and fail to receive justice in the courts because he cannot afford to continue the costly fighting of cases on appeal. Justice is likewise frustrated in a great number of instances because of delay in the settlement of cases.

The difficulties involved in the problems arising out of appeals in civil cases are very perplexing. It would not be wise to forbid appeals entirely, because, in the hurry and press of business, judges in the lower courts often make mistakes in their decisions on points of law and some higher tribunal must be resorted to to correct these errors. One improvement in the present situation would probably be to dispense with a retrial of a case when a reversal on points of law occurs in the appellate courts, and to allow the higher court to make the correction and finally dispose of the case. Of course, there are times when new trials are necessary because of the need of taking new testimony, but they are often unnecessary: Appellate courts now possess power to enter final judgments in cases on appeal, but few of them exercise the power as broadly as would seem to be desirable. The cases sent back to trial courts for final settlement in accordance with the rules announced by the higher court are still too numerous. The total cost to the state of civil trials is very great, and this could be reduced in some measure by some limitation on frivolous or dilatory appeals.

When the jury have found their verdict and have been discharged by the court the judge renders a judgment based on the verdict. A

judgment is merely a statement by the judge that the court has awarded so many dollars damages to the party who wins the case, and it is of course based upon the findings of the jury. The judgment is written and filed with the clerk of the court. It does not always follow, however, that merely because the court renders judgment for one of the parties he immediately receives his money. If the losing party has the money and is willing to abide by the decision of the court he will perhaps bring the money into court and pay the amount of the judgment against him. If he has property and does not wish to pay the sum due on the judgment, the winning party may have the court issue an order to the sheriff to seize some of the property of the defendant and sell it at an auction. This is called a sheriff's sale. The seizure of property by the sheriff is called an execution or a levy. If the person who lost the case does not have any property, it is sometimes almost impossible to collect anything from him; and in such a case the winner gets little for his trouble except that if the loser should acquire property at some future time that property could be reached on execution. The decision of a court of equity is embodied in a "decree" instead of a judgment. The only difference between them is one of name, except that the court of equity often orders something to be done other than the payment of money.

The damages usually awarded in civil cases are money damages, but in equity a specific order to do or not to do a particular act is entered on the records and served on the party who is subject to the order.

Damages
in civil
cases

The old saying that "an ounce of prevention is worth a pound of cure" is as applicable in legal matters as it is in medicine. Many expensive lawsuits could be saved if the parties to a contract, or heirs under a will, could be informed by the court beforehand of their respective rights. The function of courts of law has hitherto been conceived to be to act as an umpire between two parties to a dispute after the damage has been done by one or both of the parties to the other. The idea seemed to be that there must be a dispute between two or more persons before the court could take the case. Only in the peculiar cases in equity do the courts develop any method of preventive justice by use of orders compelling people to do or not to do some particular act. The courts of equity also take cognizance of cases where there is a doubt as to the title of a man to certain land, and even though there is no dispute between the owner and any other person, the court declares the land free from any defect

Preventive
justice

The
declaratory
judgment

of title under certain circumstances. To extend the jurisdiction of courts to cases involving the construction of the terms of a contract or will was not a great step, and several states have now authorized courts to render this service to the people of the state. One party to the instrument may institute a proceeding in a court before an actual breach of the agreement takes place. The court will call in the other party and give an opinion concerning the instrument. This enables the parties to know what their rights are under the contract. This judicial opinion, or declaratory judgment, does not have the effect of barring further relief in case one of the parties should commit a breach of the contract, if such relief is otherwise available in the particular case. This process whereby the court gives its opinion upon the meaning of the terms of some legal instrument is called a "declaratory judgment." Some lawyers were afraid that the courts would become the legal advisors of the people and that the practice of law would suffer a severe blow from this innovation; but the practice in foreign countries where this device has been used for many years and the experience in this country in those states which have used it for several years does not warrant the fear originally entertained by some lawyers on this score.

About twenty states now have declaratory judgment statutes authorizing courts to render these judgments.² Declarations have been given in quite a number of cases involving the "construction of wills, trust deeds, statutes and ordinances and the powers of statutory public bodies thereunder; the powers and privileges conferred by corporate charters or by-laws; the construction of contracts, either before or after breach, including leases and the legal relations of the parties thereto; and the trial of claims to the enjoyment of property, real or personal." The courts of some states seem to be unwilling to give full scope and effect to the declaratory judgment, and this will perhaps retard an increased use which should otherwise follow from the adoption of this excellent reform. The declaratory judgment is not like an advisory opinion, since there must be an actual dispute as to the meaning of the law or document involved in order to get the court to render a declaratory judgment; while an advisory opinion is given even though there is no dispute or controversy over the interpretation of the rules of law or the meaning of any document. Advisory opinions are given to the executive or legislative branch of the government, but a declaratory

² BORCHARD, *The Declaratory Judgment*, 28 *YALE LAW JOURNAL*, 105.

judgment is rendered in threatened controversies between private individuals.

Many business men now include in contracts which they make a provision for an arbitrator to settle any disputes which may arise concerning the interpretation of the agreement. The various parties to the contract agree to abide by the decision of the arbitrator, and elaborate provisions are sometimes included relative to the method of selecting the arbitrators and the powers which they are to exercise. The courts were jealous of such agreements for a long time but they are now coming to recognize them as valid. Several large industries are committed to arbitration on a large scale and it seems to be securing satisfactory results. Much time and expense are saved by the use of arbitrators. The chief cause for the increasing use of this method of settlement of disputes is the delay incident to the trial of cases in the courts under modern court procedure and with the present congested dockets. Another reason for its growth is that business men have grown impatient of many of the technicalities of the law governing commercial transactions.

Arbitra-
tion

The line of distinction between torts and crimes is not always very clear. But when one individual commits an act against another of such a nature that the social good demands that some punishment be administered other than that which results from a lawsuit by the injured person, and when that punishment is administered in the name of the state through its courts, we call such an act a crime. A tort is redressed by the injured individual or his representative while a crime is punished by the government. Many acts are of little social significance in a simple rural community which are dangerous in more congested areas. Of course, it should be borne in mind that, as has already been pointed out, an act which constitutes a crime may at the same time constitute a tort for which the injured person may secure redress. Both torts and crimes are wrongs against either the individual or property. The primary distinction between them is the method of their redress. That depends upon social policy and the degree of danger ascribed to the acts in question according to the social standards of the time and place. The number of acts which now constitute crimes is much larger than was true a hundred years ago. The reason for this is that in an increasingly complex social and industrial life more acts become a menace to society as a whole.

The
criminal
law

Crimes are classified on the basis of the severity of the punishment meted out for their commission, and also on the basis of the direct-

Classifica-
tion of
crimes:

ness with which they threaten the agency of government. The usual grouping of criminal acts is into treason, felonies, and misdemeanors.

1. Treason

Treason consists of the act of levying war against the state or adhering to or giving aid and comfort to the enemy. Acts constituting treason are regarded as direct attacks on the institution of government itself, and because of this treason is regarded as the most serious of crimes. State constitutions often contain provisions regarding treason, defining it and providing that certain essentials and conditions be fulfilled before persons be convicted of it. The Constitution of the United States defines treason against the United States. In most instances, acts which would constitute treason against the states would also be treason against the United States.

2. Felonies:

There are two groups of felonies, common-law felonies and statutory felonies. Most felonies now are statutory, and included in these are the graver crimes, punishable by a term in the penitentiary of a year or two, or more. It is not possible to state exactly what constitutes a felony in every case because the different states do not require the same elements in order to bring a crime within the class called felonies. At common law all crimes punishable by death were felonies.

No attempt will be made to give a complete enumeration of all the crimes which constitute felonies, but certain of the more common ones will be mentioned and defined in a general way.

(a) Mur-
der

(a) *Murder*. This is the unlawful and intentional killing of a human being by another. In many states of the Union there are two and even sometimes three degrees of murder, depending upon the presence or absence of what is called malice. Malice is usually thought of as aggravating the offense; and if the acts committed in the killing of a person are so coldblooded that they seem inhuman or unusually cruel, we say that the crime was committed with malice. Because of that we punish the criminal in question more severely than as if he committed the same acts without malice.

(b) Man-
slaughter

(b) *Manslaughter*. The killing of a human being without intent to do so, or under circumstances affording certain kinds of excuse, is called manslaughter. For example, if A kills B in a sudden fit of passion, which fit of passion was partly caused by B himself, A is not guilty of murder, but of manslaughter. The intentional and malicious, or deliberative, element is absent in this sort of a case. Or A may be doing some act which is perfectly lawful but so negligently that B is killed as a result of A's negligence. This

would be involuntary manslaughter, and not being deliberate and malicious nor premeditated would not be as serious as murder.

(c) *Arson*. This is a crime against property which consists of the burning of a building, and the term is now much broader than it was at common law. It is not necessary to burn down the building to constitute arson, but any burning is sufficient to constitute the crime. If human beings are in the building and are injured or killed, the act of setting the fire is often made a more serious offense than otherwise. (c) Arson

(d) *Burglary*. This is intentionally breaking into the building of another with intent to commit some act therein which would be felony. Many people think that burglary is breaking into a house for the purpose of stealing something. This is quite an erroneous idea, and doubtless is commonly held because it often happens that people break into houses for the purpose of stealing. But if a person breaks into a house with the intention of committing rape, or of setting fire to the house, or of committing murder, it would still be burglary. It is not necessary that the person commit the intended act at all in order to constitute burglary. It is *the breaking in* with the *intention* to commit the act which is the forbidden thing in the crime of burglary. At common law burglary was carefully defined and certain elements were required which are no longer necessary. For example, the breaking and entering must be at night and also must be the breaking into a house. But now breaking into any building during the day or with intent to commit a felony is sufficient. (d) Burglary

(e) *Robbery*. This is the taking of property from the person or presence of another by force or through fear of violence. To point a pistol at a man and demand his money is robbery because he is put in fear of violence; and although he may hand over the money, the law regards it as having been forcibly taken from him. (e) Robbery

(f) *Larceny*. Larceny, which is the carrying away of the property of another with intent to steal it, is not always distinguishable from robbery. If larceny is against a person and with force or fear of force, it is robbery; but if it is from a house with no people present therein at the time the goods are taken, and if there is an intention to really steal them, that would be ordinary larceny. Larceny is often divided into various degrees. Thefts of larger amounts are called grand larceny, but the taking of smaller amounts, petit larceny. Only grand larceny is a felony, and petit larceny is usually regarded as a misdemeanor. The intention to steal the (f) Larceny

property taken must accompany the taking in most cases, and the property must be personal property and must belong to another. Larceny is one of the more common crimes and the amount of property stolen each year in the United States totals an enormous sum.

In addition to the foregoing crimes there are certain others which are classified as felonies by some states. In other states they are called misdemeanors. One of these is forgery. Forgery is the crime of altering a written instrument with the intent of defrauding another person. Apparently the instrument so altered must impose a legal liability before the act of altering constitutes a forgery. Raising the amount for which a check is written is forgery, as is also the changing of the signature of the person who made the check. Counterfeiting money is also a felony in most states, and is closely associated with "uttering" counterfeit money, which is the crime of passing the money into circulation. Perjury is often a felony and consists of willingly telling a falsehood while testifying in a judicial proceeding. Bigamy consists in having more than one wife or husband at the same time, and is sometimes classed as a felony. Kidnapping is a felony in many states, and the same is true of conspiracy. This is the combination or agreement of two or more persons to do some illegal act or accomplish some legal end by illegal means. In conspiracy it is not necessary to accomplish the intended act to make it a crime, but the agreeing or combining is in itself sufficient to be criminal.

3. Misdemeanors

Offenses usually treated as misdemeanors and only occasionally treated as felonies are assault and battery, bribery, unlawful assembly and riot, breach of the peace, and knowingly receiving stolen goods. The large number of petty violations of city ordinances and regulatory laws passed by the state legislatures are misdemeanors. False imprisonment, which is the unlawful restraint by one of the personal liberty of another, is a misdemeanor in some states, as is mayhem. Mayhem consists in violently depriving another of the use of any of his physical members, such as fingers, legs, etc. A common nuisance, such as the maintenance of conditions which threaten to injure the peace, health or morals of the people in the community, is also a petty crime. Libel, the printed defamation of a person, is a misdemeanor, and consists in writing something false about another person which may injure his reputation or bring him into contempt and ridicule in his profession. To constitute a libel, the writing need not be published in a paper in the ordinary sense, but

must be brought to the attention of other persons than the injured party. There are a great number of other crimes besides these, but those mentioned are among the more common ones.

It should not be thought that it is always necessary actually to commit some act in order to have violated the criminal law. To attempt to commit some crimes is in itself a crime. And to have aided another in the commission of a crime or in escape after the commission of a criminal act is also a crime. Persons guilty of giving such aid are called accessories to the crime. On the other hand, not every person who commits acts prohibited by law is a criminal. Neither a small child nor an insane person is treated as a criminal, even though they commit prohibited acts, because they lack the necessary criminal intent.

Civil actions are brought by the injured party; but in criminal cases the initiative is taken by the prosecuting officer who acts for the state. Some private individual may make the first step by informing the officers who are charged with the enforcement of the law; but in any event the first formal step is taken by some officer of the law or some person acting under the authority of law. Usually the first step in any criminal case is to apprehend, or arrest, the criminal. A person may be arrested with or without a warrant, depending on circumstances. A person who has committed a crime may be arrested by an officer or private person who has seen him commit the crime, although the rules in the states vary somewhat as to what crimes justify an arrest by a private person. If an officer has good ground for believing that a person has just committed a serious offense he may also arrest the person, even though he did not see the commission of the offense; and in a few cases a private person may also arrest in such cases, but usually he may not. Private persons assume considerable risk in these cases because, unless very good reason exists for thinking that a very serious crime has been committed, he may be sued by the apprehended party for false arrest. Thus far we have discussed arrest without a warrant. Arrests are often made on warrant, that is, by virtue of an authorization issued by a judicial officer upon proper complaint by some officer or private party.

The second step in a criminal case is to bring the arrested person before some court or judicial officer who determines whether there is any probable cause for committing him to jail until the case can be investigated further. No decision on the question of the guilt of the arrested person is made at this stage. For all ordinary crimes,

Procedure
in
criminal
cases:

1. Arrest

2. Preliminary hearing

and even many serious ones, a money security is accepted to insure the return of the accused person for trial if he should be brought to trial, and if this is furnished he is given his freedom. This security is called bail. If the person for whose appearance this bail was given does not present himself when he is wanted for trial, the security is forfeited to the state. The right to have bail has been much abused in recent times, and judges have been too lenient in allowing persons who have committed several serious offenses to go at large by having friends or professional bail-givers put up security for their appearance at the trial. In some of the larger cities there are persons and companies who make a business of "going bail" for persons charged with crime. Too often it happens that inadequate security is required, and that the merits of the question of whether the person should be released upon bail of any amount are not considered at all. No compulsion may be used to make the person answer questions during the preliminary examination which takes place before some justice of the peace or other inferior judicial officer. In some instances this rule is violated, however, and this is particularly true where the person is not effectively represented by counsel from the beginning of the procedure against him. The use of arbitrary and cruel methods to obtain information from the accused at the preliminary hearing is referred to as putting one through the "third degree."

3. Accusa-
tion

The
grand
jury

The third step is to accuse the person formally of the offense which he is supposed to have committed. This may be done in one of two ways. The method used for all serious offenses in most states has been that of indictment by a grand jury. The grand jury is a body of citizens selected at the beginning of the term of court from the inhabitants of the community. This jury considers the evidence against the suspected person but does not hear his side of the case at all. All that the grand jury has to determine is whether there is sufficient evidence to warrant bringing the person to trial. Is there a probable guilt on the basis of the evidence presented against the person? If there is, the grand jury indicts him. If not, it does not indict him. The proceedings of the grand jury are secret. It may attempt to gain information on its own initiative or it may rely solely on the information which the officers of the law have been able to secure. The prosecuting attorney collects this evidence and aids the grand jury in its work. The grand jury consists of from thirteen to twenty-three men at common law, and the decision it makes may be reached by majority vote. If the grand jury thinks

there is sufficient evidence to warrant bringing the man to trial they return what is known as a true bill, or an indictment, which specifies the crime, the place of commission, the time of the same, and many of the known details concerning it.

The grand jury is not used so much now as formerly because of the difficulty in obtaining information, the need for quick action, and the difficulty of securing able men to serve on it. In many states it is seldom used; in many others it is only a rubber stamp for the prosecuting attorney, and in still others it has actually been corrupt and negligent in its work. However, it has served a useful purpose and when composed of conscientious and able men, safeguards the work of the officers of the law, and may at times act properly as a supervisor of the prosecuting attorney.

Many states now allow the prosecuting attorney to file an information against a person suspected of having committed a crime, and this instrument contains a statement concerning the nature of the act supposed to have been committed, and the time and place of its commission. Some states allow an information to be used in quite serious crimes also; and the tendency is for the states to use this process more and the grand jury less as time goes on. The information tends to place still more of the responsibility for the enforcement of the criminal law on the prosecuting attorney.

The in-
formation

After an information or an indictment has been filed against the accused person he is brought before the court. He is then informed of the nature of the charge against him, and is asked whether he wishes to plead guilty or not guilty. If he pleads guilty no further trial is had, but the judge imposes a sentence at that time or at a later date. The accused person may employ counsel, and even though a plea of guilty is entered, counsel may make a short statement to the judge in which circumstances may be set forth which might soften the sentence imposed, because they show that the accused person did not commit the crime in its most aggravated form.

4. Trial

If a plea of not guilty is entered, the date for trial is fixed. The next thing to be done is to select a jury. This is done in much the same manner as in the trial of civil cases and need not be described again at this point. This jury is often called a petit jury, as distinguished from the grand jury. Due to the prevailing rules governing the grounds on which jurors may be challenged and the large number of challenges permitted, it is sometimes very difficult to secure a jury to try a particular case. This is so if it has attracted any notoriety before the trial is begun, because knowledge of, or

Selection
of jury

opinion concerning, phases of the case are sufficient to disqualify. The result is that there is great delay in impanelling a jury and the trial is thus postponed. When the jury is finally drawn, it will probably be composed of men and women who are scarcely intelligent enough or educated enough to understand or comprehend the nature and significance of the whole procedure; and in a large number of cases the evidence and arguments concern matters of such technical nature that it is impossible for the type of men and women on the average jury to pass any intelligent judgment upon the dispute. Not only is justice often delayed, but the whole process is exceedingly expensive. For serious offenses a jury of twelve men is still required in many states, but for minor offenses an eight- or six-man jury is often permitted.

Prosecu-
tor's
statement
to jury

Examina-
tion of
witnesses

The jury being summoned and sworn in by the clerk, the trial opens with a statement by the prosecutor of what he will attempt to prove against the accused person. The prosecuting attorney calls his witnesses one by one, and examines them in the presence of the judge and jury. Photographs and other exhibits may also be shown to the jury. The examination by the prosecutor is called the direct examination. When he has finished asking questions of the witness, he asks the defending lawyer whether he has any questions he wishes to ask. If the defendant's lawyer wishes he may do so, and this process is called cross-examination. There are many technical rules governing the admission of certain evidence and the exclusion of other kinds, and it is for the judge to decide in each case whether the particular evidence should be allowed to go to the jury for their consideration in reaching their conclusion as to the guilt or innocence of the party. If a lawyer does not think a bit of evidence or testimony should be admitted, he objects; and if the court thinks his objection sound, the objection is sustained; but if the judge thinks it unsound, he overrules it. If the lawyer is not satisfied he files an exception, and such exceptions may be the basis for asking for an appeal later on.

Attorneys'
speeches
to jury

The attorney for the accused person calls his witnesses as soon as the prosecuting attorney has finished his side of the case. The defendant's attorney directly examines those witnesses he wishes to call, and the prosecuting attorney may cross-examine them. When all the testimony has been given, the prosecuting attorney makes a speech to the jury in which he sums up the evidence presented and attempts to influence the jury to convict the accused person. These speeches are sometimes very elaborate and

emotional, but this is perhaps less true now than was the case during the past century. Following the prosecutor's discourse to the jury, the defending attorney makes his jury speech. This address is so framed and delivered as to work upon the sympathies of the jury in the hope that it may cause them to bring in a verdict of not guilty, or if they find him guilty, to find him guilty of as small an offense as is possible. After the arguments of counsel have been completed, the judge delivers a speech to the jury in which he summarizes the evidence, states the rules of law which govern the case, tells the jury how they are to proceed with their work and the possible verdicts they may return. This speech by the judge is called a "charge" to the jury. The charge by the judge will sometimes greatly influence a jury which has great confidence in, and respect for, the presiding judge. But state judges are rarely permitted to comment to the jury upon the evidence. This is an unfortunate restriction, and often deprives the jury of wise and pertinent suggestions concerning the value of the various parts of the evidence.

Judge's
charge
to jury

The jury retires to deliberate in secret as soon as the judge has finished his charge. The sheriff or a deputy guards the room in which it conducts its deliberations. The work of the jury consists in going over the evidence which has been presented to them and deciding from it whether the prisoner is guilty or not guilty. If a unanimous vote of the jury is required, it often takes a long time to secure action by them. One man or woman may sometimes prevent them from reaching any decision. This is called hanging a jury. The jury is presided over by a foreman, and when a conclusion is reached they march into the court room and the foreman announces the verdict to the judge. If the jury is unable to agree upon any decision after a long period of deliberation, the judge may discharge them and order a new trial. In many states the requirement of a unanimous verdict has been dispensed with, and a three-fourths or five-sixths majority is all that is needed to convict, particularly for less serious offenses.

Jury
delibera-
tions

The
verdict

The jury does not fix the sentence which the accused shall receive, even though they find the man guilty. The judge is empowered to sentence the criminal, and the circumstances of the case will be taken into account in fixing the length of the sentence or the size of the fine. The prisoner is brought before the judge after the verdict has been returned by the jury and the judge pronounces the sentence. The usual sentence imposed for criminal offenses used to be a fixed

The
sentence

Methods
of
releasing
persons
convicted
of crime :

1. Pardon

number of years in some place of detention. The judge was sometimes given some latitude in awarding the sentence by a provision in the statute fixing the minimum and maximum penalties, and the judge could select any period which fell within these bounds. The tendency has been to introduce more flexibility than was formerly the case in the fixing of penalties. It has come to be recognized that legislatures cannot make scientific awards of penalties for whole classes of acts, nor is it always possible to tell whether one act should be penalized more or less than another. After all, it is the person who commits the act, not the act itself, who is to be punished, and for that reason the punishment should be based to some extent on the person as well as on the nature of the act. When sentence is pronounced, an officer is ordered to take charge of the prisoner and place him in such place of detention as has been mentioned in the sentence. There are several methods of relieving a person convicted of crime from serving the term or paying the fine imposed upon him³ by the court. One of them is pardon. A pardon is an executive act of clemency whereby the convicted person is freed from the legal consequences of his crime. It does not wipe out the guilt but wipes out the legal consequence attendant upon guilt. Pardons may be either absolute or conditional. Under a conditional pardon the prisoner is freed provided he agrees to observe certain stipulations made in the pardon.

Closely associated with pardon is commutation, which consists in lessening the penalty imposed for crime. A reprieve is a temporary suspension of the sentence. Reprieves are granted when there are unusual circumstances which warrant delay in the execution of the sentence, such as, for example, the discovery of new evidence after conviction. An amnesty is a legal pardon to a group of persons and is usually granted by legislative act.

Thirty states give the governor complete power of pardon. In many of these states there is also a pardon board which is only an advisory board, whose advice the governor may but need not follow. Eighteen states now have pardon boards which share the power of pardon with the governor, the latter having only one of several votes on the board. The practice of granting pardons varies considerably from state to state. Governors sometimes follow closely the recommendations of pardon boards, while at other times and in other states the recommendations of such boards are frequently

³ SUTHERLAND, *Criminology*, Chaps. XXI-XXIII. See also the admirable discussion in GILLIN, *Criminology and Penology*, Chaps. XXII, XXIV-XXV.

ignored. About two-thirds of the states provide that reports on all pardons be made to the legislature at stated times.

Pardons are decreasing in number, the popular notion to the contrary notwithstanding. But there are many criticisms constantly being made of present pardon practice. 1. It is argued by many, not without some reason, that the pardon is often available to persons of political influence. 2. The effect of pardons upon prisoners is bad because they are more interested in securing a pardon than in reforming their habits of life. 3. The effect upon the courts of a system of pardons is said to be bad, for judges will be careless in the imposition of sentences. Sometimes they will gratify powerful groups of people who demand heavy penalties regardless of the merits of the case, thinking that the pardon power will relieve the severity of the sentence. 4. Finally, it is pointed out by many, including persons who have been governors, that the burden of the pardon function is too great to place upon the shoulders of the chief administrator of the state. It is also observed that the governor does not have the time nor means for determining whether particular cases merit pardons or not. This is one of the strongest arguments for placing the pardon power in a board whose decision should be final. Pardons are given for a great variety of reasons, and the longer and more severe the sentence, the more likely it is that a pardon will be granted. There is no doubt that there have been great abuses of this power on various occasions. A need for some system of taking care of possible miscarriages of justice and also of keeping the administration of the criminal law apace with changing public opinion is evident, however. Public opinion, to which the governor will be likely to respond much more quickly than the courts, sometimes demands a change of policy in the administration of the criminal law long before courts and legislatures are able to adapt themselves to changed standards. Perhaps the greatest defect in pardoning systems, as at present operating, is that there are no satisfactory methods for determining the question of whether a pardon should or should not be given in a particular case. The individual, and not the penalty or the crime committed, should be the basic factor in any intelligent system of pardon. Until there is found some more comprehensive means for securing information concerning the individual who seeks pardon, and ascertaining his ability to enter into the normal activities of an ordered society with safety to himself and his fellow beings, the granting of pardons must remain what it has been for centuries, mostly guesswork.

Provision is also made in a number of states for relieving persons convicted of crime from paying the penalty imposed upon them by means of a variety of good-time, indeterminate sentences, and parole laws. These laws are usually enforced and applied by some administrative board. The release of persons sentenced by a court is regarded as an administrative function under these statutes.

2. Good-time laws

Many states allow prisoners to be released before the expiration of the term for which they were originally sentenced because of good behavior during confinement. The reasons for these laws, called good-time laws, are various. They help to solve the problem of prison discipline, encourage a desirable attitude toward prison work in the prisoner, and at the same time lessen the severity of penalties. The administration of such laws may tend to become mechanical, and in so far as they are predicated upon a fixed sentence and arbitrarily determined without reference to the individual concerned, the value of good-time laws is at best problematical.

3. Parole and probation

A person who has been released from a jail or prison after he has served part but not all of his sentence, on condition that he will properly behave himself and remain under the supervision and in the custody of some state agency until his final discharge, is said to be on parole. Parole differs from probation in that a part of the sentence is served before the person is released, while in probation no part of the sentence is thus served. Parole refers only to the penalty of imprisonment. It does not carry with it a "remission of guilt" such as is true of a conditional pardon; and therein lies the difference between the two. The honor system allows the person less freedom than does the parole, and the latter is of statutory origin, while the former is not. A parole reduces the length of time served in an institution. State supervision is maintained over the liberated person and some assistance given to him, such supervision and assistance being partly to keep informed concerning him and partly to assist him to live up to the conditions on which he was released.

Practically every state now has some system of parole, but the extent to which it is used varies greatly from state to state. Some states release as high as ninety per cent of the persons committed to prison, while in others as few as twelve per cent are released. In local penal and reformatory institutions there are often boards of parole in charge of releasing and supervising prisoners. In many states there is a board of parole; but these boards meet once a month or at similar fixed intervals, and the members are seldom required to devote their entire time to this work. In some cases their work is

almost perfunctory, although in other states they perform the task well. The problem of supervising and aiding persons released on parole is a difficult one; and before an intelligent solution of it can be reached, full-time officials must be employed to take charge of the system, and more scientific methods must be devised for extending or limiting the effects of the system as it now operates.

Several limitations on the extent of parole are found in the statutes of many states. 1. Parole is often restricted to persons committed on indeterminate sentences, thereby being inapplicable to serious offenders. 2. A part, one-third or one-fourth, of the sentence must be served before the prisoner is eligible for parole. Some states require that a fixed number of years must be served before those convicted of certain types of crimes can be paroled. 3. A guarantee of employment is often required. These three limitations are not the only ones to be found but they are the ones commonly prescribed. They are not satisfactory, and it is questionable whether the legislature of a state should attempt to classify prisoners who are to be eligible for parole. Prisoners can hardly be dealt with as classes, but must be dealt with as individuals. The test for parole should be whether the particular prisoner can be trusted with his liberty under some supervision, and whether he will use his freedom for useful purposes. Some states seem to parole all prisoners as soon as they are eligible unless some good reason appears for not doing so. In the present state of information regarding criminology, the best that a parole board can do is to make as careful a guess as possible. It must be remembered that good conduct in a reformatory institution is not always an accurate or complete test of fitness for release. While the system of parole is apparently a step forward in the treatment of persons of anti-social tendencies, much remains to be learned about its operation and effects before it can be utilized with any certainty of success.

Restrictions on parole

The judicial branch of state government is not, however, concerned solely with the adjudication of private rights between individuals, or in the enforcement of the criminal law. The courts in American states are also given certain powers of peculiar political significance: (1) the enforcement of constitutional and statutory limitations upon administrative officers, and (2) the enforcement of constitutional limitations upon the work of legislative bodies.

Judicial review of administration

Much of the work of law enforcement is done by administrative officers without the aid of courts. This is true because most people obey the orders of administrative officers or boards without ques-

tion. But, of course, in the final analysis the courts must be called upon if the law or administrative order is resisted by the individual. With the ever-increasing complexity and extension of administrative work in the states has come the necessity for preliminary investigations into the facts of various situations by administrative bodies. This is particularly true in the field of industrial and social regulation. It is now very common to allow these bodies to make final findings of fact, and to permit them to call in witnesses and make extensive and intensive investigations into the many facts bearing upon various phases of the subject which has been brought under administrative regulation.

But the decisions of state officers and commissions on points of law are never final. Appeal to the courts is provided for on points of law, and for this reason the courts are often called upon to review decisions of these fact-finding commissions. When administrative commissions were first established, the public did not trust them, and appeals from their decisions were very frequent. As time goes on, it is probable that people will come to have the same respect for these quasi-judicial bodies that they now have for courts. They are apparently indispensable under present conditions, but it is nevertheless true that the work of the courts has been increased because of appeals from these commissions. On the other hand, it is probable that the burden on the courts would have been infinitely greater if it had not been for the establishment of these bodies, because the task of investigating the many technical phases of cases which come up in the course of regulating industry is tremendous, and courts are ill-suited to perform that duty.

This right of judicial review of administrative action which is available to a person claiming to be injured by such action, extends not only to administrative boards or commissions but also to any individual officer engaged in state administration. Thus, for example, the citizen may appeal from the act of a policeman just as he may appeal from a commission's finding, if the constitutional rights of the individual are invaded. Of course, American citizens often think that many more of their constitutional rights are being invaded than is true in reality. At times the courts, in taking cognizance of the complaints of citizens, may seriously interfere with the work of the administrative department by forbidding certain practices which the administrative agencies of state government are using. It should be remembered, however, that a highly organized administration has a tendency to undervalue

the rights of the individual, but few would maintain that American administrative organization had reached that point as yet. In most instances, state administration is oppressive because it is ineffective rather than because it is over-effective.

Functions intrusted to administrative officials must be performed in accordance with the statutory provisions whence the power to perform these functions is derived. To the courts is given the task of deciding whether executive and administrative officers act within the limits of their constitutional and statutory powers. The question whether the legislature has acted within its constitutional power in intrusting an executive officer with a particular function is sometimes a troublesome one because of the doctrine of the separation of powers. Legislatures occasionally attempt to delegate judicial or legislative functions to the executive branch of government. In such cases the courts are likely to be called upon to decide whether this is permissible. Thus it is that the courts are engaged to some extent in the executive and administrative departments of state government.

Earlier in the history of the growth of administration in this country the courts were very strict about these matters, but they are now tending to recognize the demands of efficiency in government. Hence the legislature is allowed a greater degree of freedom in the organizing of administrative agencies and the granting of sufficient powers to them to carry on the work of state government in an efficient manner. Usually the protection afforded the individual by judicial review of administrative officers is of a negative nature, and it seldom takes the form of compelling officers to act affirmatively in the enforcement of state policy. Courts rarely take the initiative in the enforcement of state policy, but, as has been indicated previously, it is true that in this negative way they can sometimes influence the enforcement of such state policy by the administrative agencies of the state.

There are also certain procedural limitations imposed upon administrative boards and officers having quasi-judicial functions. There must usually be a hearing for all interested parties and also sufficient notice to them that a hearing is to be held. The facts must, of course, be sufficient to support the conclusions, and the proceeding must be conducted in an orderly way, though it need not be so formal and technical as the procedure required in a court. But there must be a chance to examine witnesses and to inspect documents and otherwise introduce evidence before the commission or officer.

Judicial
review of
legislation

One of the most important functions performed by state courts is the function of deciding whether legislative enactments are constitutional or not. When we speak of laws being declared unconstitutional we usually refer to an act passed by the legislature, *i.e.*, a statute. And when we refer to a statute as unconstitutional, we mean that the rule or the principle enunciated in the statute is contrary to the rule or principle found in the state or federal constitution. These rules often take the form of express limitations on the power of the legislature. State courts may declare a state law unconstitutional because it is thought to be contrary to the state constitution; but they may also declare a state law unconstitutional on the ground that it is contrary to the United States Constitution. The occasion of courts declaring laws unconstitutional arises because they must determine what the rule of law is in a given case. The court is confronted with two rules, one contained in the constitution, the other contained in the statute. The state constitution being of higher character as binding law than the statute, the courts must necessarily follow the constitution and refuse to follow the rule laid down in the statute. When a law is declared unconstitutional all that is done by the court is to refuse to apply the rule established in the statute. The statute is not repealed by the court; only the legislature can do that. A statute is declared unconstitutional only when some person comes into court or is brought into court because of a dispute, and it appears that some right of his, or power of the government, depends upon the statute and constitutional provision in question. The courts do not have the power to declare a law unconstitutional at any time they feel like doing so. There must be an actual case being litigated before the court can touch upon the question of the unconstitutionality of the statute involved.

But the process whereby statutes are declared unconstitutional is not so simple as the foregoing paragraph would seem to indicate. The principle or rule which is embodied in a constitutional provision is not always easy to define. It is sometimes equally difficult to tell what the rule is which is contained in the statute. The constitutional provision may be worded very vaguely, and the result is that the courts will have to decide what the rule is as best they can. The way in which judges make up their minds as to what the principle or rule of a constitution is on a particular point is exactly the same as the manner in which anybody else makes up his mind on such a question. The judges try to find out what the words as they are written really mean, if anything; and when the meaning is not clear,

they attempt to find out what the framers of the constitution might possibly have meant when they used these words. In trying to discover this, the judges will look to see what ideas these men expressed on this subject in the course of debates on the floor of the convention, or will try to find the object of the provision in general, or what seemed to be the general attitude of the people at that time toward the subject involved in the section of the constitution which they are trying to interpret. But after all this has been done, it is still very difficult in many cases to tell just what the section means. Then the judges will have to read into it very cautiously what they think it should mean. This means, of course, that the section in question is given an interpretation which is influenced by the views of the judges on the various subjects concerned in the cases arising under this section of the constitution. It sometimes happens that the vague portions of the constitution are those which treat of subjects upon which there is a radical difference of opinion among the people of the state. When that is true, it is to be expected that the people who think that a different principle should be read into the section of the constitution involved in a particular case will criticize the court for adopting the interpretation it does. So it is that people criticize the courts for their exercise of the power to declare laws unconstitutional. Those people who agree with the court's interpretation of the constitution on a given subject think that the court is quite right in exercising the power. In the next case it may be that the positions will be reversed, and those who were in favor of judicial review of legislation in the first case will be against it in the second. It depends upon which side of the fence one is on. If his beliefs or interests are better advanced or safeguarded by having the law declared unconstitutional, he is likely to favor the use of the power; but if his interests and beliefs demand that the law be declared constitutional, he will naturally criticize the court for declaring it unconstitutional. It is because of this that vague phrases in the constitutions of the states should be eliminated. They place upon the courts too great a burden of responsibility. Some state courts have been very wise in their interpretations of constitutional provisions, but others have been very mechanical in their attitude and have read their own opinions into the words of the constitution even when their meaning was quite clearly opposed to that which the words would ordinarily have, and which the framers must have intended. Most people feel that when the meaning is not clear from

the words themselves, the courts should pay some heed to the wishes of the people as represented in the legislative and executive branches which have approved the law. The reason why we have five-to-four decisions is just the one we have mentioned:—that people do not agree on what shall be the meaning to be given the words of the constitution.

The number of state laws which have been declared unconstitutional is quite large, though small when compared with the number of those which have been held constitutional. But the difficulty is that the few cases which arouse public opinion are just those which have a widespread interest and wherein the people and judges are divided among themselves over the question of the interpretation to be given the constitution. When large numbers of people have interests at stake it is only to be expected that there will be much debate pro and con.

Not only do the courts declare laws unconstitutional because they embody rules and principles which are contrary to those thought to be enunciated in the constitution, but they also declare them unconstitutional because they have been passed by the legislature without regard to the rules of procedure to be followed by the legislature specified by the constitution. Many laws are declared unconstitutional for this reason, and it is very unfortunate that this is so. This practice has led the courts sometimes to evade their duty by formulating a doctrine that whatever the journal of the legislature says will be taken as final on the question of what procedure was followed. The belief was expressed in the chapter on the legislation, and is repeated here, that it is a mistake to put so many rules of legislative procedure in the constitution.

On the whole the courts of the American states have done their work well, and this estimate is perhaps more true of the way in which they have performed their function of supervising the administrative officers of the state and of enforcing the constitutional restrictions upon legislatures and legislation, than of the way in which they have done the work of settling ordinary civil and criminal cases. The great task of the courts is not to enforce constitutional limitations, but to try civil and criminal cases, and they must stand or fall upon their record in this branch of their work. While they have done their work in as intelligent a manner as probably could be expected of them, there is, nevertheless, need for much improvement before the courts can hope to gain that confidence of the people at

large which is so essential to the effective and just administration of the law, and the orderly conduct of government.

As a general rule the supreme courts of the states will not pass upon the constitutionality of any law or upon the legal significance of any given set of facts unless there is actual dispute which culminates in a case such as may be presented to the court. But in about one-eighth of the states the giving of advisory opinions by the state supreme court to the governor or legislature is authorized by the constitution or by statute and custom. The governor or the legislature may submit a set of facts to the court and ask for an opinion on them. Sometimes the court is asked to render an opinion on the constitutionality of some proposed law which is being considered by the legislature, or to advise the governor on the extent of his power to act in a certain situation confronting him as chief executive. The opinions thus given by the court do not have the force of an actual decision in a case which might subsequently arise on this same point, but of course such an opinion will be very persuasive with the court in the later case.

Advisory
opinions

There is considerable difference of opinion over the wisdom of having advisory opinions given to the governor and the legislature. In favor of the practice it is pointed out that proposals which would otherwise be passed only to be later declared unconstitutional by the court would be abandoned by the legislature on the advice of the court, and that the court would be saved much work and time in this way. The practice of rendering advisory opinions exists in Massachusetts, and fewer laws are declared unconstitutional in that state than in most states where the advisory opinion is not used. The main argument in opposition to this practice is that the court renders its opinion in the abstract without the benefit of the argument of counsel. Another criticism is that it tends to draw the courts too close to the political side of the actual work of legislation and administration, and that the court will be subjected to political influences to a greater degree than it is at present. A further objection is sometimes offered that the court will not feel free to declare the statute unconstitutional after it has once given an advisory opinion in which the measure, when pending in the legislature, was said to be constitutional. Of course, it is not meant that the court should become the attorney-general of the state by the introduction of advisory opinions, nor would the court be expected to give an opinion except upon important matters pending in the executive or

legislative branch of the government. The court would perhaps not answer questions of form and procedure with regard to legislation, but would leave those to the governor and legislature, who would perhaps seek the advice of the attorney-general, as heretofore has been the practice.

CHAPTER SIXTEEN

LOCAL GOVERNMENT (Other Than Cities)

THERE is to be found in various quarters a wide divergence of opinion with respect to the proper distribution of the functions of government between the states on the one hand, and the several areas of local government on the other. Certain categories of activities have been laid down by various persons and designated as being "naturally" local in character. Accepting these categories as beyond question, their proponents proceed to declare that action looking to the transfer of any of these functions from local to state authorities is an invasion of the "natural" and "inherent" rights of self-government. Even the extending of state control over the performance of such functions by the locality is branded by them with the same stigma. Unfortunately for the force of such contentions, convincing proof is lacking that any such particular right is, as a matter of fact, either natural or inherent.

Distribution of functions: state or local

The fact seems to be that historic forces combined with the exigencies of recent circumstances have brought it about that certain functions are at a given moment assigned to the state government, while others are vested in local authorities.

It is generally conceded to-day, for example, that the regulation of banks and the care of the insane are matters of general interest which are best left to state administration. On the other hand, the administration of outdoor poor-relief, the maintenance of minor roads and the management of public libraries are matters primarily of local interest and should be left to local authorities. Between these is a wide range of services concerning which no one can say with finality that they are solely or preëminently either of state or local interest and hence should be definitely assigned to either authority.

Moreover, it is well known that matters which at one period are universally viewed as being of local interest assume in course of time a state-wide importance and hence call for state action. But a few years since, the maintenance of roads and the generation and distribution of electrical energy were matters of purely local interest. To-day, the development of the automobile and of improvements in

Transformation of functions

electrical transmission have made both arterial highways and high-tension power lines objects of state-wide interest and of state action. Less frequently the shifting of interest is in the opposite direction from state to local. At the present time, however, there is in some quarters a movement to transfer the function of higher education at the junior college level out of the hands of the state and place it under local administration subject merely to state control. To attempt, then, to set up any categorical classification of functions into state and local is bound to prove futile. Apparently the functions or "rights" of local self-government are those which upon grounds of efficiency and social expediency the people of the state have for the time being seen fit to repose in the local rather than the state authorities.

Federal-
state and
state-local
relations
compared

If a comparison is made of the relations existing between the federal government and its subdivisions, the states, on the one hand, and between the several states and their subdivisions, the counties, townships and cities, on the other, two distinct points of difference appear.

First. It will be discovered that the relation between the government at Washington and that of the states is federal in character. This means that the states are recognized as distinct entities and that an apportionment of functions and power between the central and state governments is made in the Constitution. Thus the sphere of action of the states is protected from encroachment save by the process of constitutional amendment.

Within the states an entirely different situation exists with respect to the relation of the state government to its various subdivisions. Save for certain constitutional exceptions to be considered presently, it is a definitely established principle that the subdivisions of the state owe their origin, organization and continued legal existence to the will of the state as laid down by the legislature. In other words, the unitary rather than the federal system prevails in state government.

As a second point of distinction appears the fact that the government of the United States almost never employs the machinery of state government to effectuate its purposes. The central government maintains within every state its own organization and personnel to collect its revenues, enforce its regulations, handle its mail and prosecute and try offenders against its laws. In the matter of elections alone does the federal government make use of the organs of the state to do its work. Quite different is the situation between the

state and its subdivisions. Not only are state elections conducted by local officials, but state taxes upon property are collected by local tax gatherers. The administration of elementary and secondary education, the enforcement of the health and other police laws for the protection of persons and property, the recording of titles to property, the administration of the estates of deceased persons and the administration of petty justice are examples of state duties intrusted wholly or in part to local authorities. Each area of local government, then, stands in a dual position in that it serves at the same time as an area of local self-government and as an administrative district of the state. This duality of function must always be borne in mind when questions of local "self-government" and "home rule" are under consideration.

Although, under the general theory of our law, the position of all institutions of local government is one of complete subserviency to the power of the central government of the state, practical considerations have led to certain modifications of the rigorous application of this rule. There exists among English-speaking peoples a conviction that it is desirable to foster a general public interest in government and to develop everywhere a lively civic consciousness. To that end there has developed the practice of intrusting to each local area, so far as is consistent with the protection of the wider interests of the whole community, the direction of those affairs with which it is primarily interested. Confessing the practical wisdom of this idea, the constitution-makers in a considerable number of states have recognized certain rights of counties, townships and cities, and have set up specific constitutional restraints on the power of the legislature to work its will upon these areas of local government. In recent years this has been especially the case with respect to cities.

One group of constitutional limitations upon legislatures which work as a protection to counties and townships are those which limit special legislation in general. The nature and extent of these has already been discussed in Chapter VII dealing with the powers of the legislature. Some of these limitations seek to eliminate special legislation entirely, while others limit its enactment only in certain particulars with respect to subject matter or method of enactment. Local areas are sometimes guaranteed the right to select their own officers by popular election without state interference. Sometimes local offices may not be abolished nor the salaries reduced during the incumbency of an officer. Another group of limitations has for its object the preservation of the integrity of the county

Principle
of local
self-
government

Constitutional
protection
of
localities:

1. Special
legislation
limited

2. Terri-
torial
integrity
preserved

either territorially or as a permanent and distinct organ of government. Most frequently of all, the legislature is forbidden to alter county lines or to divide counties without the consent of the voters of the areas concerned. In a number of the newer states, no county can be created to contain less than a specified area, commonly fixed at four hundred square miles, nor less than a specified population. Sometimes county seats can be removed only with the consent of the voters of the county. Similar restrictions with respect to townships and cities are seldom met with in constitutions.

3. "Home-
rule"
secured

A third group of limitations on legislative power over local government is one which has attracted widespread attention in connection with city government. This includes the so-called "municipal home-rule" sections which appear in the constitutions of a number of states. These provisions which confer upon cities power in varying degree to frame their own charters and to legislate freely upon all matters of purely local concern, do not fall within the compass of this volume. It is pertinent, however, to observe that in California these home-rule privileges have been extended to counties and hence stand as barriers against legislative action affecting these areas.

Adminis-
trative
develop-
ments

As a result of the study of the chapters devoted to the administrative services performed by the state, certain facts will have been observed which have a bearing upon the subject of local government. In the first place it will have been seen that a considerable number of the functions which are now performed by the state had their beginnings as matters of purely local concern. Such, for example, is the regulation of public utilities in most of the states. Again it will have been observed that the rôle now played by the state with respect to a large number of public services is merely a supervisory one, and that the actual administration of the service has been left to the local authorities. The administration of health and of elementary education suggest themselves as examples of this. In the third place, it will be found that where the state has actually assumed the details of administration it is generally in matters with respect to which the advantages of highly specialized professional treatment could best be secured by state action. Examples of this are the care and treatment of the defective and dependent classes, and the carrying on of scientific inquiry in many lines for the public benefit.

Such are, in general, the relations which exist between the states and the various areas of local government into which they are divided. If one examines the functions of local government as they have been assigned by the several states, it will be discovered that

everywhere the sum total of the work performed by local authorities is substantially the same. But when attention is turned to institutions and to the actual distribution of the work of government among them, it will be found quite impossible to make general statements which will hold true throughout the country. Each state has solved these problems in its own way, either through a process of historical development, by copying the institutions and methods of other states, or in some cases, apparently, by the merest chance. Under these circumstances it seems advisable to investigate first the several functions usually performed through local agencies and afterward to inquire what institutions have been set up in various parts of the country to perform them.

The universal unpopularity of the tax gatherer is intensified when that officer is a stranger, not of the immediate neighborhood. Hence, everywhere, localities have strenuously resisted attempt to centralize the machinery of taxation. The salient features of the taxing process and the defects in its administration have already been touched upon in Chapter IX. The general practice is to vest the work of assessment of property in the smallest active unit of local government. Where the township exists as a vital institution, the assessor is usually elected in that area. He is ordinarily wholly untrained for his work and enjoys but a brief tenure of office. In states where the township does not function the primary assessment is commonly made by a county assessor. Quite generally in urban areas as well as in some rural districts, some progress has been accomplished in placing the work of assessment on a professional or semi-professional basis.

The amount of revenue to be raised is determined and the levy made by each local taxing unit. It is then customary for a local financial officer of the township or county to bring together these local levies and the state levy and to prepare a single statement of the total amount payable by each taxpayer. It is the practice in some jurisdictions for each taxing unit not only to levy but to gather its own taxes. The funds thus collected are distributed to the appropriate custodians of the several areas and to the treasury of the state.

The actual holding of elections, not only local but state and national, as well as of the primary, is in immediate charge of officials of local government. State laws provide in great detail the steps in the processes of nomination, election and the canvass of votes, and sometimes for state supervision of the registration of voters and

Possibilities of generalization, with respect to:

1. Functions
2. Institutions

Functions of local government:

1. Taxation

2. Elections

of the conduct of elections. The definition of precinct lines, the preparation of polling places, the naming of election boards, the initial canvass of the vote, and in the case of local elections the preparation of ballots are all attended to either by the county or some lesser division. Local areas also serve as organization units for political parties and are recognized as such by the statutes regulating party activities.

3. Police
protection

The fact has already been emphasized in discussing the general problem of law enforcement that the ordinary duty of police protection is imposed for the most part upon local officers. From time immemorial the sheriff and the constables have been charged with the preservation of the peace in rural districts. In certain localities containing a large suburban population adjacent to a great city, as, for example, in Cook County, Illinois, there is maintained a county police resembling in its main features a city police force. Wherever a state police force has been established, care has been exercised to make its activities merely supplementary to those of the local authorities. Although their chief duty is the enforcement of state law, the local officers are in the performance of that duty almost wholly free from state control. Besides the preservation of the peace and the apprehension of criminals, local police officers are charged with the duty of serving summonses, subpoenas and other legal papers. As a corollary to the work of capturing offenders against the law, there is imposed on the local officers of the peace the care of the jails and other places of temporary detention.

4. Justice

Hand in hand with the maintenance of order, and indeed an essential part of that process, is the administration of justice. There has always been a popular insistence upon free and easy access to courts in the immediate vicinity for the vindication of the rights of the people and the settlement of their disputes. Large powers to this end have been conferred upon local authorities everywhere. It is true that in addition to petty courts of a purely local character, there are in most states courts held in every county acting directly under state authority. It should be observed, however, that the officials of the court, not only the sheriff but the clerk, the prosecutor, and even the judge in many cases are the choice of the voters of the county. Both the organization and the functions of these agencies of justice have already been enlarged upon in another chapter of this book, so that further discussion is unnecessary here.

When, in the first half of the last century, the public health became an object of governmental concern, its care was definitely confided

to the localities through the creation of local boards of health. But during the nineteenth century little progress was made in this work outside the cities. Rural health authorities maintained a nominal legal existence, but powers in this field were commonly reposed in some existing county authority acting *ex officio*. Their activities were for the most part confined to sporadic and ineffective action in combatting outbreaks of infectious diseases, usually smallpox. Such local representatives were with the lapse of time invested not only with the duty of administration of quarantine and vaccination laws, but with the reporting of diseases and vital statistics, the abatement of nuisances dangerous to health, and, sometimes, the enforcement of at least a part of the pure food law. In some localities these broader administrative duties were delegated to a local health officer. Within the last quarter of a century state departments have been given an increasing measure of control over local health boards, and under the stimulus thus administered real progress has been made in some localities. County health authorities have, in some states, done commendable work in public health education and preventive medicine through the activities of the public health nurse. In some localities work of this kind has profited by the substitution as local health officer of a public health specialist in place of a general medical practitioner.

5. Public
health

Another function of government which in many of its phases remains in local hands is that of dispensing charitable relief. It has already been seen how groups requiring public care of specialized kinds, particularly those afflicted with disease of either mind or body, have one after another been provided for by the state. There still remain everywhere under local care two classes: those receiving out-door relief, and those who, though not specifically diseased nor defective, stand in need of institutional care. The dispensing of out-door relief from its very nature can best be administered by persons of the immediate vicinity, within easy reach and conversant with the circumstances in each case. As long as such relief is administered by a layman selected in many cases at the ballot box, much extravagance and unintelligent giving is inevitable. In more progressive communities, through the employment of trained social workers and the coöperation of private charity organizations, the administration of such assistance has been placed upon a more satisfactory basis. With respect to the care of those wholly and continuously dependent upon public support there has also been a progressive development. Two generations ago it was still the

6. Charity

Out-door
relief

Institu-
tional
care

practice in backward communities where paupers were few, to board dependent persons out in the private family of the lowest bidder. The abuses arising from the ignorance and greed of those who thus assumed the care of such persons led to the abandonment of the system. At this point institutional care was introduced in the form of the "poorhouse." Here all those who were wholly dependent were brought together, usually upon a farm where those physically able were expected by their labor to contribute to their own maintenance. In New England the township poorhouse is still to be found, but elsewhere the county has been made the unit of poor-relief. By selecting a unit of this extent it is possible in an economical manner and under competent supervision, to give proper care to those who become inmates of the institution. Unfortunately it must be confessed that even in spite of the present awakened interest in social welfare problems and a considerable degree of state supervision, many of these county institutions fall far short of the standards set by state institutions of similar character. In many populous counties throughout the country there has been a great improvement brought about through a segregation of special classes of dependents, and separate institutions similar to those maintained by the state have been established for each group.

7. High-
ways

Despite the phenomenal expansion of state policy in the field of highway construction, nine-tenths of the public roads of the country are still constructed and maintained by local authorities. After the collapse of the early adventures of the states in road building, the highways were almost invariably left entirely to the care of the local communities, in some localities to the township and elsewhere to the county. A separate levy for highway purposes was at one time not infrequently imposed and the privilege granted of working out the road tax in lieu of the payment of money. In those parts of the country where the nature of the soil does not lend itself readily to the maintenance of dirt roads, great progress has been made in recent years by local authorities in the construction of gravel highways, and, in more densely populated regions, of macadam and even hard-surfaced roads to supplement the state system. Coincident with the movement for state highways has come a tendency more and more to centralize control of at least the principal secondary roads in the county. Where the smaller civil divisions still retain control, a certain degree of supervision over the plans for building roads is vested in engineers of the county or the state.

In New England and wherever the influence of the New England tradition extended, schools were early established and the school district became everywhere the unit of common school administration. The school district meeting deliberating on the educational concerns of the neighborhood became as potent a training school in self-government as did ever the town-meeting. Bitter fights were waged and neighborhood feuds engendered in these assemblages of the voters, over the levying of a school tax, the building of a school house, or the election of a trustee, agent, or school committee as the executive authority was variously denominated. When at a later date in the states where the New England example was less influential free public schools were established, the "magisterial district" in the states where it existed became the unit of school administration. Elsewhere the creation of the school district constituted the first attempt to erect a political division smaller than the county. In the northern states, the school district has generally been supplanted by a system of township management and the district school by the consolidated graded township school. A further step in centralization has been brought about in placing the administration of the schools entirely in the hands of the county. Though the expansion of state supervision has brought the determination of educational policy, including the course of study, the textbooks to be used, the length of term, the minimum salary and even in some states the examinations to be given, largely under state control, yet the management of the physical property is still vested in the county or its subdivisions. Large sums as grants-in-aid are distributed by the states from their accumulated school funds and from taxes, but the financial support of the schools is still in no small measure derived from local taxation. The development of state control has not altered the fundamental fact that there remains great variation in the excellence of the local schools from place to place within the same state, and in large measure the quality of its public education is a fair index of the worth and intelligence of a community.

Local governments everywhere perform certain duties of a clerical nature. Naturally the records of the proceedings and acts of the local governmental authorities are matters of local record. It is further desirable that certain public records having a wide interest should be constantly available to the general public. Hence such records are intrusted to local custodians whose positions, although clerical in character, are highly important and responsible. Among such records may be specially mentioned those of land transfers,

mortgages and liens, wills, probate proceedings, and vital statistics including births, marriages and deaths.

10. Minor
functions

Besides those enumerated in the preceding pages, there is an increasing number of other functions which are performed by the various local authorities outside the cities. Some of these are purely ministerial, but others are of a distinctly discretionary character, carrying with them wide freedom of local initiative. The shifting of population, due in large degree to the development first of the suburban electric railway and more recently of the automobile, has brought into existence extensive suburban and semi-rural communities which lie outside the limits of city or even village government. These communities demand a variety of public services which have in the past been generally thought of as city functions. Among them may be mentioned the providing of libraries, parks, and forest preserves, and the supplying of sewers, water, gas, electricity, and fire protection.

Institu-
tions

Having thus surveyed the fields of governmental action which in this country have generally been confided to local authorities, we may proceed to a study of the institutions which have been set up in various parts of the country to perform the duties thus imposed. The whole territory of every state is divided into major subdivisions which are called counties in all the states except Louisiana where the term parish is employed instead. It should be explained that in a few states certain cities do not form a part of any county but are virtually if not legally counties in themselves. As will be seen presently in greater detail, uniformity in the matter of subdivisions ceases with the county. In some of the states, counties are divided into minor political divisions variously known as townships or towns, while in others there is no corresponding systematic subdivision of the whole of its territory. In some of the former class of states, subdivisions of the county exist for special administrative purposes only. Everywhere densely populated districts are given special forms of organization under the name of city, borough, town or village.

City
excluded

Most conspicuous as well as the most important of these minor areas of government is the city. Like other organs of local government, cities derive their powers from the state, and this remains true even in those instances where the city was already in existence before the state government was set up. The government of this most complex as well as important area of local government is usually made the subject of a separate and special course of study

and will not be dealt with in this volume. In this book the discussion of "local government" will be confined to that of the county, township, town, and village or borough.

For purposes of study it will be found possible and convenient to classify the local government of the states into four classes: the New England, the southern, the "supervisor," and the "commissioner" types. This classification is based upon two factors: first, the distribution of the function of local government between the county and its subdivisions, and second, the structure of the central organ of county government, the county board.

Classifica-
tion of
local
govern-
ments

The New England system of local government is peculiarly the product of well-marked historic forces, and can be understood only in the light of its origins. Some of the earliest settlements were made and local institutions set up before colonial governments were established, but upon the creation of the colonies they were quickly brought under colonial authority.

The New
England
type

When the people of New England went out from the older communities to found settlements in the wilderness, they almost invariably went as groups and not as individuals. These groups found themselves bound together by a threefold tie which affected profoundly the form of government which developed there. First, they located upon land which they procured, either by grant from the colony or by purchase from the Indians, and of which they became joint proprietors. Second, the group of settlers, especially in Massachusetts and Connecticut, were members of an organized church society. Sometimes this society was formed and a minister chosen before the trek into the wilderness was begun. Upon their arrival, one of the first acts was the erection of a meeting-house.

Origins
of the
"town"

Finally, to secure protection from the Indians who were, until the close of the seventeenth century, a continual menace, the pioneers built their dwellings near each other in a group about the meeting-house. Thus they became intimate neighbors. These people, therefore, found themselves bound together by the ties of a common ownership of land, a common church, and a common danger.

This tract of land, made up of three parts: woodlands owned by all in common, separate farm lands or "out-lots" apportioned to individual ownership, and, about the meeting-house, the central group of "home lots" on which the houses of the "freemen" were located, constituted the New England "town" as it existed in the earlier colonial period. Later comers were admitted either as "freemen"

to a share in the common lands, or as "inhabitants" only, by the vote of the freemen.

As the danger from the Indians became less and the inhabitants of the towns became more numerous, the people no longer huddled their houses within the shadow of the meeting-house but dispersed themselves over the lands of the town. Gradually the common lands were divided and parcelled out to individuals so that by the time of the Revolution the earlier bond of joint proprietorship had for the most part ceased to exist. Towns organized after the seventeenth century were sometimes formed from new grants of wild lands, but were also frequently created by dividing the territory of the older and the larger towns.

Use of
the word
"town"

A source of great confusion of mind among students of local government in the United States is the varying use of the word "town" in the several parts of the country. In most places outside New England and outside the state of New York, where the New England influence in this respect is strong, the word "town" is applied to a compact settlement of urban or semi-urban character usually smaller than what in the same neighborhood is called a "city." When the name is given this meaning, it may be applied either in a strict technical way to incorporated areas to which the name town has been legally assigned, as in Indiana and several other states, or it may be used merely in a vaguely descriptive sense to apply to any urban locality whatever its legal designation may be, to distinguish it from the "country" or rural regions.

In New England and New York, as has just been observed, the name "town" is applied to an area which in the Middle and Far West would be called a civil township, but which is of irregular shape and of varying area. While in most of these towns of New England there is a village, such a compact settlement is not necessary to constitute a town. There are towns which contain no village at all, and in many cases where a village does exist it has but a mere handful of inhabitants, forming but a fraction of the total population of the town. Where urban places of considerable size are found in the towns they have usually grown up at a later date as a result of industrial development. To avoid confusion as far as possible, in the pages which follow the word "town" will be used with its New England meaning. When reference is made to the compact settlements which constitute "towns" in the western and southern sense, the words "village," "borough" or "city" will be used. This distinction in use should be borne in mind by the reader.

The government of the town was from the beginning vested in the town-meeting, a democratic assembly of all the freemen, *i.e.*, all those who by vote of the town-meeting had been admitted to full citizenship, and all powers vested in the town were exercised by that body. It was held at frequent intervals and the freemen were summoned to it by the constable. The executive committee of the town, known usually as the selectmen, presented matters of business for the consideration of the meeting, and any freeman could likewise present any matter of business which he saw fit to bring forward.

Town-
meeting

The subjects which ordinarily engaged the attention of the meeting were local improvements, such as roads, bridges and ferries; the building of a school or meeting-house; the care of the poor, and the maintenance of the military company or "train band" of the town. Appropriations of money were made and taxes voted or day's-work levied for these public purposes. Even the most trivial appropriations were sometimes made by vote of the town-meeting. When an expenditure of money had been authorized, it was customary to make a special tax levy to meet it. Not the least among the governmental functions performed by the town-meeting was that of establishing police regulations. Besides the ordinary regulations for the public safety and convenience, the early meetings in the colonies which were dominated by the Puritan clergy made rules requiring regular church attendance, and controlling the conduct of adults and children. Speech, dress, and deportment were all made the subjects of regulation, and the rules were rigorously enforced and severe penalties inflicted for breach of the letter of the law. At an annual town-meeting officers were selected to manage the details of public affairs in accordance with the directions given by the meeting. These officers included the selectmen, clerk, constable, treasurer and a considerable number of other minor officers.

Besides these functions of an ordinary governmental nature which are to-day exercised by town-meetings, the early meetings performed others which are no longer within the scope of its activities. One of these functions was to determine who should be permitted to come to live in the town, and what should be the status of such persons as were permitted to come in. The towns did not admit every stranger who saw fit to wander into the community and take up his residence, nor did they allow every person to remain there merely because he had once been admitted. A bad reputation, a suspicious appearance, the lack of a trade, or the failure to conduct oneself with propriety were sufficient grounds for refusing admission or for

expelling a person. Under the theocratic régime in Massachusetts, ability to subscribe to the tenets of the established church was made a condition of admittance and failure to live in conformity with its rules of conduct was ground for expulsion.

The persons who were admitted to residence did not always possess the same status in the community as the first comers. After the lands had been purchased and settlement made, newcomers might be admitted to full fellowship including full rights to share in the common lands. This, however, was not likely to be the case. Ordinarily such persons were granted one or more tracts of land in individual ownership. They were also made "freemen," a status which gave them full right to vote in town-meeting upon matters of government, but they were not made joint proprietors of the undivided lands, nor were they given a voice in the management and disposition of them. There came also to be another class, that of "inhabitants," who were admitted to residence without having conferred upon them even the rights of freemen. Thus there were recognized the three classes: proprietors, freemen and inhabitants. In later years, when joint proprietorship in land had ceased and the theocratic influence had waned, these distinctions of status faded, and the privileges of citizenship were extended to all inhabitants, or at least to all freeholders.

A second function which was at first performed by the town-meeting and which for a century was important in the life of the town was the administration of the common lands. When there came to be a separate class of "freemen" who were entitled to participate in strictly governmental affairs, this common domain was administered in a separate "proprietors' meeting." From time to time it would be voted in the meeting to divide a tract of the common land into "lots," or farms. When these had been laid off equal in number to the number of proprietors by a committee for that purpose, the shares were assigned by lot to the individual proprietors or to their heirs or grantees. The meeting of proprietors also made rules, sometimes strict and minute, concerning grazing and the cutting of timber, as well as other uses of the lands still undivided.

With respect both to its functions and its institutions the New England town has for the most part preserved to the present time the character which it acquired during the colonial period. The town-meeting no longer performs the function of admitting persons to the privileges of citizenship, nor does it administer a proprietary domain of common land. Neither are the police ordinances enacted

by the town-meeting of the present day concerned with the intimate details of personal dress and deportment as was the case two centuries ago. In the rural towns and in the thickly populated ones which have not been incorporated as cities, the direction of town policy is still vested in the town-meeting. The voters continue to assemble in the town hall at the annual meeting presided over by the "moderator" to listen to the reports of their officers and to their proposals of expenditures for the ensuing year. The determination of matters of public improvements and the fixing of the tax levy of the town still furnish occasions for spirited debates among the voters present. After these matters of policy and finance are decided, the meeting proceeds to the election of town officers. Among these are included the board of selectmen (in Rhode Island called the town council), clerk, treasurer, overseer of the poor, tax assessors and collector, supervisor of highways, school committee, and in some states a town sergeant or chief constable, and in others, justices of the peace. Besides these there are in some cases a number of minor officers. In some places there is a disposition in recent times to delegate the selection of minor officers to the board of selectmen.

The selectmen are in reality an executive committee of the town acting in the interval between town-meetings. It is their duty to see that the policies formulated in town-meeting are carried into effect, and that the duties imposed upon the town by statute are performed. To these ends they order specific improvements, let contracts, supervise the acts of the above named officers, and approve accounts and claims. It is generally the selectmen rather than the town-meeting who enact police ordinances. The duties of the other town officers mentioned are clearly enough indicated by their titles. It will be found in New England, since the county is an important area of local administration, that the town-meeting and the various town officers perform virtually all the functions which fall within the scope of local government.

Town
officers

The county made its appearance early in New England but did not attain general acceptance until the eve of the Revolution. Unlike the New England town, it was an institution imposed from above and never became a vital factor in local government. Even to the present day it inspires no loyalties; neither does it enter into the political consciousness of New England.

New
England
county
origins

Massachusetts was divided into counties in 1643 for purposes of administering justice and militia affairs. Magistrates to preside in the county courts were chosen by the legislature, although after 1650

candidates were nominated by the voters. In the same year, representative county commissioners were chosen by the towns to equalize taxes. About the same time, militia officers and a treasurer were first elected by the people of the county and the town clerk of the county-seat town was made recorder of deeds. By the end of the seventeenth century, the magistrates of the county had become a court of probate. In Connecticut, county courts for judicial and probate purposes, consisting of a member of the upper house of the legislature and two justices chosen by the legislature, came into existence in 1666. Rhode Island established counties at the opening of the eighteenth century, and New Hampshire in 1771, but in both colonies only for judicial purposes.

County
govern-
ment

County government, so far as it exists at all at present in New England, may be quickly disposed of. In Rhode Island, where it reaches its lowest ebb, the county has no power to lay a tax, has no treasury, holds no property, and elects no officers. Its courts are state courts, its court house and jail are the property of the state, and its only officers, the sheriff and the clerk of court, are chosen by the legislature and paid from the state treasury. In the other five states of this group there is a county board consisting usually of three commissioners, elected in Connecticut by the legislature and in the remaining states by the voters. In Vermont, the meager functions of a county board are performed by the county justices. In each of five states the board has power to erect and maintain county buildings, in Maine to maintain certain county roads, and in New Hampshire the duty of poor-relief is placed upon the county board. Police powers and the conduct of elections are nowhere vested in the county in New England. In Maine and Vermont alone do the county boards levy taxes. Elsewhere this power, even for county purposes, rests with the legislature. Other officers, found in New England counties outside Rhode Island, are a sheriff elected by voters, a prosecuting attorney, and a treasurer chosen by various methods.

The
Southern
type

In the southern colonies, the conditions of life lent themselves to the development of a very different type of local government from that set up in New England. Neither a joint proprietorship of land, a common church, nor a common and imminent danger from the Indians was present to bind the people together. The land was, during the first century of settlement, granted in large tracts to individuals who, with slaves and white servants, established themselves upon isolated plantations. These plantations constituted self-contained economic units usually widely separated from each other.

Villages or urban centers grew up only at rare intervals. The immigration of other and less aristocratic classes of persons, who settled the back lands of the colonies, came at a later date and had no immediate effect upon the political system. Under these circumstances the county came to be the unit of a form of local government which bore a marked similarity to that of the English county.

As early as 1634 counties were established. Like their English prototypes the country gentry, the larger planters were appointed by the governor as justices of the peace. Their semi-feudal position being reinforced by their political authority as magistrates, the justices of the peace individually dispensed petty justice. Sitting collectively in court of quarter sessions they became the governing body of the county. This county court regularly consisted of at least eight justices, only one of whom was required to have legal training. The individual justices made the assessment of their own precinct, and the court levied the county tax. The objects of county expenditure were few, including roads, militia and the maintenance of the court house and jail. Besides the justices there were a sheriff, lieutenant, and coroner, appointed by the governor on nomination by the court, and a clerk of the court and constables appointed directly by the county court. The sheriff performed the ordinary police duties attaching to that office, apprehended runaway servants, inspected tobacco fields to secure observance of the regulations imposed by the legislature, served writs, collected taxes, and acted as treasurer of the county. He also served as returning officer for elections to the Assembly in which body the county was the unit of representation. The lieutenant was the head of the militia company of the county. The clerk of the county court served also as recorder of land titles.

County
origins

Even before the division of the colony into counties there had been created ecclesiastical parishes with their minister, wardens and vestry. As an adjunct to their churchly functions the parish administered poor-relief and had power to levy taxes both for this and their more strictly ecclesiastical purposes. The vestry, at first elective by the parish, soon became self-perpetuating and at a comparatively early date lost all civil authority. Thus there was set up in Virginia an aristocratic system of local government in sharp contrast, both in externals and in spirit, to the system which was taking root in New England.

In North Carolina alone of the three colonies south of Virginia, was there more than a rudimentary development of county govern-

ment in the colonial period. In that colony a system of government by justices of the peace sitting in county court and having both judicial and administrative authority took form before 1700, and during the eighteenth century became fully developed. Although counties were legally recognized in South Carolina and local courts of justice established, neither in that state nor in Georgia was there anything worthy of the name of county government during the colonial period. In both these colonies parishes were created for ecclesiastical purposes, and these were charged with the civil functions of poor-relief and the election of members of the legislature. In neither colony, however, did the parish acquire political significance.

Maryland was first divided into counties in 1650. County government developed slowly there, but by the close of the colonial period such a system of government had emerged in that colony. Undoubtedly the evolution of county government was delayed there by the existence first of the hundred, and later of the parish which tended to supersede the hundred. These subdivisions of the county had minor civil functions in connection with electoral and militia matters. The conclusion must be reached that outside of Virginia and to a lesser degree in North Carolina, no vigorous development of local government of any sort took place in the southern colonies.

Present-day
organiza-
tion

The Revolution brought little or no change in local government in the South, but before the Civil War there had come about a swing away from the centralized system of appointed local officers toward popular election. At the present time it may be said to be a system based everywhere on the county as the unit and, with a single exception, centering about an elective county board as its chief organ of government. The single exception to the rule is Georgia where the probate judge under the title of "ordinary" performs the functions of a county board with respect to finance and highways. Whatever its specific form, the county board in the South is known variously as the board of supervisors, county commissioners, county court or, in Louisiana, the police jury. With respect to their composition, county boards of the South may be divided into two classes, although their functions are essentially the same. The first class is exemplified by the board of supervisors in Virginia, the police jury in Louisiana, the county court in West Virginia and the county commissioners of Florida. The members of these bodies are elected either at large or by districts in every case except South Carolina, where in most counties they are ap-

County
board

pointed by the governor upon nomination by the county delegation to the legislature.

The second class of county boards is exemplified in the county courts of Kentucky, Tennessee and Arkansas. The distinguishing feature of these courts is that, like their prototypes the county court in early Virginia and the court of quarter sessions in old England, it is composed of the county magistracy including the county judge and the justices of the peace of the county. It should be noted that in Kentucky any county may, by vote of its people, substitute for the fiscal court a board of three county commissioners. In spite of its name and composition, however, there is not in these courts in any great degree a mingling of judicial and political functions. Except perhaps in some cases in Tennessee, sessions for judicial business are held by the county judge alone. When convened for legislative and administrative purposes it is composed of both judge and justices except in Tennessee where it may sit without the judge. When sitting for purposes other than judicial, it is called in Kentucky the "fiscal" court and in Arkansas the "levy" court.

The political functions of all these county boards in the South, of whatever variety, are substantially the same as those of similar boards in the Middle West and Far West. Since this is true, and in order to avoid repetition, their activities will be discussed in subsequent pages together with the activities of local authorities in those sections.

Functions

Besides the county board there is in each of the states in this section a sheriff, and generally a treasurer, surveyor, county clerk or clerk of court, recorder of deeds, assessor, prosecuting attorney and a superintendent of schools. A few variations from type may be observed. In Virginia the assessor is known as commissioner of revenue, and in Georgia, as tax receiver; while in Kentucky, where the tax administration is highly centralized, the assessor has been superseded by a county tax commissioner appointed by the state tax commission. In Tennessee a "trustee" performs the duties of treasurer and collector of taxes. Sometimes in these states the registration of land titles is performed by the county clerk.

County
officers

A most striking characteristic of local government in the South, when compared with that found in New England, is the absence of divisions less than the county which have real political significance. When these lesser districts in the South are compared with the northern subdivisions of the county, these differences will be observed. In the first place, instead of employing a single area for the

County
sub-
divisions

various local purposes, it is not unusual to create for each individual purpose special districts which are not coterminous. Furthermore, it is noticeable that many of these southern districts are without corporate existence or the power of taxation. They constitute what are sometimes known as administrative, rather than political areas.¹

Middle
colonies:
Origins
of local
govern-
ment

In the middle colonies of New York, New Jersey, and Pennsylvania, all originally in the proprietary class, conditions seemed at first to favor the development of a form of government similar to that found in the South. Land was granted in large tracts, settlements were scattered, and an aristocratic element was introduced in the first-settled portions among the Dutch patroons of the Hudson valley. Certain leavening influences appeared early to give a new trend to institutional development. An early influx of Puritan settlers into Long Island and the lower mainland of New York and into New Jersey injected a strain of democratic sentiment. The Quaker influence, too, tended away from aristocracy in government. The result was the development of a type of government which, while embodying features similar to those found in the North and South, was distinctly unlike either. Both the "town" in the New England sense and the county after the southern model gained a foothold which they have maintained to the present day.

Supervisor
type

Upon the assumption of control over New Netherlands by the Duke of York and the setting up of a system of local government, the town-meeting already well established in the Puritan settlements within the colony was given official recognition. The function of the body was, however, restricted to the election of a constable, and overseers who were to decide local policies, levy taxes and act as justices. Established, at first somewhat tentatively, in New York in 1665, county government had definitely been set up in these three colonies by 1682, somewhat upon the Virginia plan, with appointed justices exercising both administrative and judicial functions. Soon after the revolution of 1688, local government was reorganized and in both New York and New Jersey there was chosen from each "town" a person to assist the justices in their fiscal duties. Gradually these elected representatives took over the administrative functions of the justices, thus definitely departing from southern models. In New York this body of representatives came to be known as the board of "supervisors," and in New Jersey as the board of "chosen freeholders." In New York, the supervisor, in addition to his duties

¹ FAIRLIE, J. A., *Local Government in Counties, Towns, and Villages*, (New York, 1906), Chap. X.

as a member of the county board, became the treasurer and chief administrative officer of the town. Besides the supervisor each town elected in town-meeting a clerk, constable, surveyor, overseer of the poor and assessor. In Pennsylvania the New England influence did not prevail and there was created a body of three commissioners in each county elected at large and corresponding to the board of supervisors in New York. In all three colonies there was elected a sheriff. Although the "town" in the New England sense existed in Pennsylvania, its importance as a governmental organ was negligible. Thus we find comparatively early in the middle colonies, two types of government intermediate between those of North and South and partaking of the nature of both the others, but in varying degree. The one, the "supervisor type," and the other, the "commissioner type," were to serve as models for the local governments to be established everywhere beyond the Alleghenies except in the states immediately south of the Ohio River which were dominated by southern influences.

Commis-
sioner
type

When settlers crossed the mountains into the northwest territory they found that provision had been made for both counties and townships. The county officers: the sheriff, treasurer, coroner, recorder of deeds, probate judge, and justices of the peace were to be appointed by the governor, and the justices were to perform political, administrative and judicial functions after the fashion of Virginia. Within a few years there was substituted, to perform the political and administrative functions of the justices, a board of three elected commissioners like that existing in Pennsylvania.

Meantime a system had been introduced under which the land was surveyed into what came to be known as "congressional townships" and these subdivided into sections one mile square. The congressional township was made also the standard area of local government under the designation of "civil township," although in many places the boundaries of the "civil" and "congressional" townships did not actually coincide. As in New York, the town-meeting performed no function other than that of electing township officers: constable, clerk, overseers of the poor, fence-viewer, assessor, road supervisor and three trustees.

The old
Northwest

The recognition accorded to the township as an institution in the early government of Ohio was undoubtedly due to the fact that the settlements made about Marietta by the Ohio Company were dominated by New England men. Likewise, the settlers who came presently into the Western Reserve of Connecticut on the shore of

Ohio

Lake Erie were accustomed in their old home to the "town" system of government. Wherever the physical surroundings of frontier life made it convenient to make use of the county as the chief local unit, people with a New England political heritage naturally preferred the supervisor type of New York to the commissioner system of Pennsylvania. When the time came to decide upon a permanent system of local government in the new state of Ohio, a spirited contest ensued between the advocates of the two forms of county government. The result was in favor of the three-commissioner type, which relegated the township to a position of lesser importance.

Rivalry
between
types
of local
govern-
ment

It has already been seen how local government in the newer South had tended, except in a few states, in the direction of a system under a board of commissioners chosen from election districts rather than from townships. As lands further to the southwest were opened for occupancy, settlers from the more southern states streamed in bringing with them their peculiar views as to local institutions. In the newer states of the North West Territory and in the great regions west of the Mississippi both north and south the three systems of local government—the supervisor, the county-commissioner-township, and the county-commissioner-district systems—have contended for mastery of the field. In the end, the result has been determined in the main by two forces: the political antecedents of the dominant group of settlers, and the physical and economic conditions by which the people in the new state were surrounded.

In Michigan, Wisconsin, and Illinois, where the stream of emigration was stronger from New York, the supervisor system was set up, with the township playing a subordinate but real part in government. Later the same system was established in Nebraska. The commissioner-township type has found much wider acceptance than has the supervisor system. From Ohio it has spread to Indiana, Iowa, Minnesota, Missouri, the Dakotas, Kansas and Oklahoma. In each of these states the board of county commissioners exists, and along with them the usual officers: sheriff, justices of the peace, coroner, treasurer, recorder, clerk, or their counterparts. A characteristic of this type of government is the presence of the township as a real functioning organ of government, although it is not made the basis of representation on the county board.

Whenever two streams of population having different traditions of local government have met within a state there has usually resulted a contest between the two sets of ideas. Usually one or the other tradition has emerged triumphant, as has been described

in Ohio. Elsewhere the difference has sometimes been adjusted by resort to the principle of home rule, permitting the people of each county to decide for themselves what form of government they shall have. In Illinois and Missouri, the contest has been between the supervisor system of the North and the commissioner-district system of the South. Eighty-five of the one hundred and two counties in Illinois have seen fit to organize townships and inaugurate the supervisor system, while in Missouri ninety-two of the one hundred and fourteen counties have chosen to live under the commissioner-district system. In Nebraska about one-fourth of the counties have townships, and in Washington, where they may be organized at will, no county has yet availed itself of the privilege.

Home
rule
applied

When we proceed to examine the local governmental systems of the newer states it is found that the southern type with county commissioners elected by districts has found favor everywhere in the Rocky Mountain and the Pacific states. In all these states it appears that the comparative sparseness of population has made impracticable any development of the township.

Type in
the Far
West

If an attempt is made at generalization, disregarding mere differences in nomenclature, the situation with respect to local government outside cities and villages may be summed up as follows. The county exists in some form in every state in the Union. Counting Illinois as a state having the township and Missouri as being without it, it may be said that in twenty-two states both the county and the "town" or township exist, sharing the functions of local government. Wherever both exist, save in six states of the supervisor type, there is no organic relation between county and township. In the forty-two states in which the county is the dominant local area of government, twenty-nine, or two-thirds of the number have as the characteristic of their system a board of commissioners elected from election districts. It may be fairly said, then, that this has come to be the dominant form of local government in the United States.

Résumé
of county
types

Since it is apparent that the county has become the dominant unit of local government throughout the United States, save in a half dozen of the older and smaller states, it may not be inappropriate to take a survey of the institutions and their functions as they exist to-day in so large a part of the country. This task is made the less difficult because, as has been demonstrated, county government throughout the country has tended within the last generation to assume a common structure.

Present-day
county
government

The county board may be said to be the central and most vital

County
board:

organ of government. However selected and of whatever size, it everywhere performs substantially the same functions. Meetings of the board are held at intervals ranging from once or twice a year in localities where their functions are limited, to once a month or even more frequently in places where they directly concern themselves with the details of administration. One session at which the budget is approved and the tax levy made, stands out as the most important of the year. As is usually the case with boards primarily of an administrative character, most of their deliberations are held behind closed doors, action at the open sessions being confined chiefly to the formal registration of action already privately agreed upon. The board organizes by the selection of its own chairman, and its proceedings are conducted in an informal manner.

Meetings

Functions:

1. Finan-
cial

Like other agencies of local government, the county is a body of strictly enumerated powers. Whenever a power is conferred upon the county without any specific agency being designated for its exercise, it is the county board which exercises it. Counties are vested with but slight power to make regulations of general application so that their powers of a legislative character are confined chiefly to the approval of the budget, making appropriations, the levy of taxes and the borrowing of money. There is great diversity in the financial methods of counties, but it may be said that modern budgetary methods have not made marked progress in the counties, except in a few states where they are imposed by state authority. Where more approved methods have been adopted, the budget is scrutinized and appropriations made by the board. The total authorized expenditures including the county's share of the state levy having been determined, a tax levy sufficient, with other sources of income, to meet this, is made.

2. Gen-
eral
adminis-
trative

In a very few states, typified perhaps by Indiana, the appropriation of funds and the levy of taxes are made by an elective board which is distinct from the regular administrative body. The discretionary functions of the county board consist in determining upon the purchase of land, the erection of buildings, the laying out of roads, the ordering of bridges, and the contracting for supplies, materials and equipment for the county offices and institutions. Specifications are approved and contracts let by the board. It is in connection with the awarding of contracts that the greatest offenses against economical administration are to be found. Commissioners are too often unfamiliar with technical matters with which they are called upon to deal, or are not men of good business judgment. The

financial losses suffered by the county from ignorance and poor judgment are vastly larger than those arising from dishonest practices. State law has endeavored to eliminate fraud and collusion in these financial operations by requiring quite generally that purchases shall be made and work done only by contract awarded to the lowest bidder after open competition. In a few places the state prescribes forms of contract and specifications, and supervises the execution of the work to determine whether the specifications are complied with. Funds of the county are disbursed upon order of the board. Bills or claims against the county are presented to the board, and when approved by them go to the treasurer for payment.

The county board is in many places assigned certain duties in connection with elections, not only for the counties themselves but for the smaller areas within them. These duties include the delimitation of precincts, the providing of polling places and furnishings, the appointment of election officials, the preparation of local ballots, and canvassing and returning the vote.

3. Elec-
toral

The work of the county is by law decentralized to such an extent that the board has very little control over the county officers beyond the few minor ones sometimes appointed by it. The board is frequently given power to investigate the work of all county officers, although it has no direct power to control their actions. The powers and duties of county officers, as in the case of local officials generally, are prescribed in such detail by statute that there is left to them little discretion as well as little opportunity for their direction even indirectly by the board. It is able nevertheless, through its power to appoint and remove administrative officers and to make appropriations and allow claims, to exercise a considerable degree of control over the limited discretion left to the several officials.

4. Direc-
torial

Besides the larger duties just enumerated, the board performs a considerable number of minor ones such as the preparation of jury lists, the filling of vacancies in office, and, where that unit exists, sometimes to change township boundaries. Besides the county board there are certain other officers of considerable importance who are so universally encountered throughout the country that their position and functions merit discussion. Among these may first be mentioned the sheriff.

5. Minor
functions

Although in no sense the head of the county administration, the sheriff may be spoken of as the chief administrative official. Descended from a notable official lineage, he is found in every state, acting as the chief conservator of the peace and custodian of the

Sheriff

jail, as well as the agency for the serving of judicial process and carrying out the orders of the courts and of the county board. In common with a majority of the other county officials, and perhaps to a greater extent than any other, the sheriff acts as an agent of the state as well as of the county by which he is elected. Originating in an equally remote past, though playing a less important part, is the coroner. He is usually to be found in all states except where he has been superseded by a medical examiner. His duty is to determine by inquest, when necessary, the cause of the death of persons who die under suspicious circumstances.

Coroner

Clerical
functions

What may be spoken of collectively as the clerical work of the county falls under three heads: that of clerk of the court; that of clerk of the county board, and that of a financial nature. It is the duty of a clerk of the court to prepare and keep the records of the court, make transcripts of papers, take acknowledgments and depositions, make up jury lists, prepare summonses for jurors and witnesses, issue licenses, and affix to documents the seal of the court. The functions of this office sometimes extend to acting as clerk of the court of probate where such a separate court exists. The chief duties as clerk of the county board are to keep a record of the proceedings of the board and issue papers upon their order. As financial clerk the duties are to prepare and submit the budget (where a budget is in use), keep the accounts of the county, issue warrants upon the treasurer upon vote of the board, and prepare the tax lists for collection by the treasurer. To these there is occasionally added a fourth, that of acting as a recorder of deeds and mortgages of land.

Clerical
officers

There exists considerable diversity from state to state as to the distribution of this clerical work. Occasionally there is found in a county a clerk of court, a county clerk and an auditor, for the three classes of work respectively. Sometimes the county clerk is at the same time clerk of the courts. Elsewhere the duties of clerk of the board and auditor are combined under the same person, in some places bearing the title clerk and in other places auditor. Although the land records are sometimes in the custody of the county clerk, in other states there is a separate recorder of deeds.

In the administration of an area of government, there grow up in the course of time certain methods and traditions with respect to the doing of things; a body of precedent which is the product of experience rather than of law; a fund of information with respect to details which only time can impart. These must be given due consideration if administration is to move forward smoothly and to

the satisfaction of a majority of the citizens. It is usually the clerk or auditor who is the repository in the county of these traditions and this information, and it is for this reason that this officer is in some states given by custom through reelection a considerable degree of permanence of tenure.

In each of the forty-seven states in which the county performs political functions, there is a county treasurer or an officer who performs a corresponding duty. His prime function is to have the custody of the county funds and to pay them out upon warrant issued by the clerk, auditor or other designated officer. County funds are actually deposited in a bank or banks in the county. The county is usually a large depositor and hence a profitable one much sought after by banks. Sometimes gross favoritism, personal or partisan, is shown in making deposits by the treasurer. An older practice whereby the treasurer himself pocketed the interest paid on county deposits is now generally made impossible by law, but instances still occur in which a treasurer is granted special favors of one sort or another in return for reciprocal favor by him in making deposits. Many states have effectively put an end to these practices by rather rigid public depository laws, applying not only to state but to local funds.

Treasurer

It is the practice in the rural portions of certain of the older states to have a collector of taxes, either elected by the voters or appointed by the county board, who actually calls upon the individual taxpayers in person, while in some others this service is performed by the sheriff. In a greater number, however, taxes are paid by the citizens direct to the treasurer. The tax roll having been made up by the clerk or auditor, is transmitted to the treasurer for collection. It is the duty of the taxpayers then to make their payments to him within certain designated dates.

Collector

The functions of the tax assessor have been explained in the chapter on finance, so that it is unnecessary to enlarge upon them here further than to say that in a number of states the assessor is a township rather than a county officer.

Assessor

The trend toward centralization in the control of elementary education has tended to increase the power of the county school authorities, except where the movement has gone so far as to place a large degree of control in the state department of education. Whatever the situation, there is usually a county superintendent of schools, generally elected but sometimes appointed by the county board of education, or in a considerable number of states appointed by the

Superintendent
and
board of
education

state department. In some states there is also a county board of education, either elected or appointed by the state department or some other authority. Where both a board and a superintendent are found, there is usually a division of function much as exists in many cities throughout the country. The board manages the material interests of the schools, including the control of property, the making of contracts for supplies and with teachers, the making of the annual budget, and the levy of school taxes. To the superintendent is left the inspection of schools, supervision of teaching, advising with teachers, and serving in general as the local representative of the state department of education. Except where the prescribing of the curriculum and the examination and licensing of teachers have been assumed by the state, he performs those functions as well.

In large areas especially in the West, where the immediate control of school property and policy is still vested in the school district, there is, nevertheless, not infrequently a county superintendent possessing some supervisory functions over the scholastic interests of the schools. It is a fact to be noted that the school systems of cities, or at least of those of considerable size, are not usually brought within the jurisdiction of the county school authorities. As a result of the present movement in the direction of greater centralization, it is likely that there will come, in the not distant future, a considerable increment in the powers of one or both of these county authorities.

The development of the New England "town" has been described at some length, and the fact has been noted that this institution spread through New York into a considerable number of states where it appears in modified form as the township. At the present time, townships exist in less than half the states, and in scarcely more than one-third of the states are they more than mere electoral districts. In most places townships, like the New England "town" and the county, possesses the usual legal powers of public corporations, but their governmental functions are seldom extensive. Their functions are ordinarily of a purely local character, although they sometimes serve as agencies of county and state administration. Highways and poor-relief are their most universal functions, but schools, too, are sometimes under their control. In some states the areas incorporated as cities are excluded from the township, so that township authority extends over only rural and suburban populations. In a few states, however, such as Illinois, Indiana, and Ohio, the incorporation of a city does not exclude it from the township of

Township

Functions

which it has been a part. In such cases the functions of the township take on increased importance, and sometimes there arise overlapping and conflicts of jurisdiction, as well as a division of responsibility which is inimical to good government.

The township meeting, composed of all the voters, is found in New York, New Jersey, the northern row of states from Michigan westward as far as North Dakota, and in South Dakota and Nebraska as well. In New York and in some others of the group, the township meeting has power to levy taxes, but elsewhere it is little more than an occasion for the election of township officers. In certain of these states, notably in Pennsylvania, Ohio, Iowa, Minnesota, and the Dakotas, the chief authority of the township is vested in a board of trustees, while in most of the others of the group possessing townships there is, instead, a single trustee or supervisor. Township meeting

In Indiana, where the township plays an unusually important though diminishing part in the scheme of government, the trustee is the administrative head of the township. He has in his charge the maintenance of the township highways, the dispensing of outdoor relief, the control of school property, the employing of teachers outside the incorporated cities and towns, the preparation of the budget, and the custody and disbursement of township funds. Assessment of property for all taxes is performed by the township rather than by the county assessor. There are also in the township in that state constables, justices of the peace, and an advisory board. Trustee

The supervisor in New York acts as treasurer, and in Michigan as assessor. The township board is, in New York, Illinois and Kansas, made up of the trustee or supervisor, clerk, and justices of the peace, and in Indiana of three elected citizens. Its functions are generally financial, and especially the approving of claims and the auditing of accounts. In Indiana the advisory board of three elected by the voters has as its duty the adoption of the budget, the levy of the township tax, and the authorization of bond issues. Here the importance of the township has diminished through the transfer of the control of more important highways to the county and the impending introduction of the "county unit" system of school administration. Further westward, as for example in Kansas and Oklahoma, the importance of the township appears to have diminished. In Wisconsin the township board allows bills, audits accounts, controls township property, and creates and alters school and road district boundaries. Where no single administrative officer is found, the Township board

board performs the administrative duties elsewhere imposed on that officer.

Minor
township
officers

Wherever the township exists, except in Indiana, there is elected a township clerk who sometimes serves also as clerk of the school board. In the states of this group, the assessment of property is ordinarily vested in a township assessor, except where the supervisor or trustee serves in this capacity. In several instances a separate treasurer is also elected. Poor-relief by the township is almost always restricted to outdoor relief administered by the trustee or an overseer of the poor. Highways maintained by the township in most cases of the present day, are the lesser roads, control of the more important ones having passed to the county or the state.

In the states possessing organized townships, the justice of the peace is almost always a township officer. His functions in holding preliminary examinations of accused persons, admitting prisoners to bail, and the trial of petty cases both civil and criminal, have been described elsewhere in these pages. The township constables are sometimes vested with general police powers but are frequently restricted in their authority to the serving of warrants of arrest, and writs and processes of various sorts under orders from the justices of the peace.

County
districts
in the
South:

Reference has already been made to the various districts into which the counties of the south are divided. It was there suggested as a point of difference among them that some have no corporate existence nor power to levy taxes, but are merely areas for purposes of holding elections or the administration of justice. Others, it was pointed out, do possess corporate capacities and fiscal powers.

1. Admin-
istrative

The districts which exist merely for administrative convenience are known by a variety of names. In Virginia and Kentucky they are called magisterial districts; in the Carolinas and Arkansas the name township appears; in Tennessee, civil districts; in Maryland and Florida, precincts; in Mississippi, supervisor districts; in Delaware, hundreds; and in Louisiana, wards. These districts are made use of variously for electing members of the county board, justices of the peace, constables, school officers, assessors, overseers of the poor and sometimes still other officials.

2. Fiscal

Among those divisions which are corporations and which have the power to levy taxes are especially to be noted the school districts which exist rather generally through that section. In some states, such as West Virginia, for example, the school district is coterminous with the county districts created for other purposes, while elsewhere

they are smaller. The school district has power to levy school taxes and, except in the South Atlantic states, the school officers are popularly elected. In many of the states of the South there exist also local areas, such as drainage, levee, and health districts, which possess the power to tax and in some cases to select administrative officers for their particular purpose. The second class of districts have no corporate and fiscal powers but exist for electoral purposes only. In some cases these districts are the local administrative areas for tax assessment, road maintenance and poor relief, though they are themselves without the taxing power.

The question is frequently asked: Why have these rudimentary local areas in the South not developed into something comparable to the New England town in the interest they arouse and the functions they perform? In the opinion of Professor Fairlie it is due to a combination of influences which may be mentioned here. In the days before the Civil War, in a period of slavery, large land-holding, and a scattered population, there grew up a society which was semi-feudal and aristocratic. The existing system of county government suited such a state of society. To-day, in the South, although slavery is gone, many of the old characteristics persist. These facts, together with the conservatism of a rural population, have worked together, just as has been the case in New England, to bring about a close adherence to early forms of government. Wherever cities have arisen in the South, the form and functions of their government are substantially like those in other parts of the country.

In the western states, the name precinct is the one most often applied to the county subdivisions, although the name township is not unknown. These are, however, not true townships in the sense in which the name has been used above. Their chief function is to serve as election precincts for county and state elections, and for the choice of justices and constables. There exist also for the election of school trustees school districts which have sometimes been given the power to levy the school tax. Road districts, too, have been established in a number of states.

Wherever compactly settled population groups occur, social needs which can best be met by governmental action multiply rapidly. Problems of better streets and walks, of lighting, of drainage and water supply, of public health and of public comfort and convenience, confront the community for solution. These needs, in the larger centers of population, have been provided for by the creation of city governments of more or less elaborate form and with extensive

County
districts
in the
West

Minor
urban
areas

functions. Lesser urban groups in the United States have been provided for by the creation of more simple forms of municipal organization known variously as villages, boroughs and towns. Whatever their names, their functions are everywhere essentially the same.

Village

The development during the latter half of the nineteenth century of a densely populated industrial area in southern New England has presented a local situation far different from that under which the town system of government evolved. So strong a hold upon the popular mind has the town and the town-meeting gained that other forms of local organization of a semi-urban character have not found there a fertile field for development. Elsewhere in the United States, when a thickly populated area has grown up but has not attained the proportions demanded for a city, it is customary to incorporate it first as a village, leaving the surrounding rural district under the old organization. In New England this practice has been followed only in Maine, Vermont, and Connecticut, and there by no means universally. In Maine and Vermont these are known as villages. In the three other states of that section urban populations usually retain their town form of government long after the number of voters has become so great that the town-meeting has ceased to be a really popular assembly capable of deliberation and of rationally matured action. Boston had a population of upwards of forty thousand when, in 1822, it accepted incorporation as a city. Providence, the second town in point of population, became a city in 1832 when it had a population of seventeen thousand. At the present time five places in Massachusetts, each having a population of more than twenty thousand, and one of them, Brookline, having more than forty thousand, still retain their town form of government.

Borough

In Connecticut a few of the larger compactly settled areas, not yet ready to assume the full status of cities, have been incorporated as "boroughs." The borough and village governments of New England resemble in general form and powers the boroughs of Pennsylvania and New Jersey and the villages and towns of the Middle West.

Special
corpora-
tions

In all the New England states there have been created many special municipal corporations in thickly settled localities which have been organized for specific purposes. Among the more common are lighting, fire, water and sewer districts, each having power to hold property, levy taxes and make expenditures for its particular purpose. In England, where such districts have been created, they have been referred to as *ad hoc* authorities.

Outside New England, the incorporation of minor urban districts has been quite general. In New Jersey and Pennsylvania the name borough has been applied to such corporations. Elsewhere the field is shared by the terms village and town. The former name, first employed in New York, is most favored in those states where the township exists. In the Middle and Far West, it is the custom to apply the more ambitious title of "city" to places of such small population that but scant room has been left for the more modest names of town and village. Town

These minor urban governments obtain their corporate character either from special or general act of the legislature, or by action of the county or township authorities. Wherever these areas are given the name "city" their governmental institutions approximate those of larger cities everywhere. Otherwise, the chief executive is known as mayor, president, warden, intendant, or chairman. The chief governing authority of the place is vested in a board known variously as the council, burgesses, or board, ranging in number from three upward. The functions of the municipality exercised through the board relate to matters of police, fire protection, health, streets, sewers, public buildings, parks, markets, water, lights, the granting of licenses, and matters of tax-levying, appropriation, and borrowing. The clerk and treasurer are usually elected by the voters. Other officers at the head of the various administrative services are more often chosen by the board, and in most cases perform their respective functions under the direct supervision of the whole board or of a committee of that body. Organiza-
tion

Functions

Viewing the whole field of local government in retrospect, it will be observed that local institutions persistently strive to adjust themselves to local conditions, geographical, economic and social. It is found that wherever the institutions of the old home are transplanted by a group of people to new and unfamiliar surroundings they tend to become atrophied and disappear, or to undergo such modification as to be scarcely recognizable. Wide differences in institutions appeared in the early days when communication was slow and contacts between regions were infrequent. But when population passed beyond the Alleghanies and found greater uniformity in frontier life, local institutions tended more to common types suited to the new environment. Here and there archaic institutions persist as interesting survivals. Such are the New England town-meeting, the county court of the justices in Kentucky, Tennessee, and neighboring states, and the county "ordinary" of Georgia.

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APPENDICES

- A. Constitution of Vermont, 1771
- B. Constitution of Indiana, 1851
- C. Constitution of the State of Arizona, 1910
- D. Constitution of the United States

APPENDIX A

CONSTITUTION OF VERMONT, 1771 ¹

WHEREAS, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

And whereas, the inhabitants of this State have (in consideration of protection only) heretofore acknowledged allegiance to the King of Great Britain, and the said King has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them; employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said King and his successors, are dissolved and at an end; and all power and authority derived from him, ceased in the American Colonies.

And whereas, the territory which now comprehends the State of *Vermont*, did antecedently, of right, belong to the government of *New-Hampshire*; and the former Governor thereof, *viz.*, his Excellency *Benning Wentworth*, Esq., granted many charters of lands and corporations, within this State, to the present inhabitants and others. And whereas, the late Lieutenant Governor *Colden* of *New-York*, with others, did, in violation of the tenth command, covet those very lands; and by a false representation made to the court of Great Britain, (in the year 1764, that for the convenience of trade and administration of justice, the inhabitants were desirous of being annexed to that government,) obtained jurisdiction of those very identical lands, *ex parte*; which ever was, and is, disagreeable to the inhabitants. And whereas, the legislature of *New-York*, ever have, and still continue to disown the good people of this State, in their landed property, which will appear in the complaints hereafter inserted, and in the 36th section of their present constitution, in which is established the grants of land made by that government.

They have refused to make regrants of our land to the original proprietors and occupants, unless at the exorbitant rate of 2300 dollars fees for each township; and did enhance the quit-rent, three-fold, and demanded an immediate delivery of the title derived before, from *New-Hampshire*.

The judges of their supreme court have made a solemn declaration, that the charters, conveyances, &c., of the lands included in the before described premises, were utterly null and void, on which said title was founded; in consequence of which declaration, writs of possession have been by them

¹ THORPE, *American Charters Constitutions and Organic Laws*, Vol. VI, p. 3737.

issued, and the sheriff of the county of Albany sent, at the head of six or seven hundred men, to enforce the execution thereof.

They have passed an act, annexing a penalty thereto, of thirty pounds fine and six months imprisonment, on any person who should refuse assisting the sheriff, after being requested, for the purpose of executing writs of possession.

The Governors, *Dunmore*, *Tryon* and *Colden*, have made regrants of several tracts of land, included in the premises, to certain favorite land jobbers in the government of *New-York*, in direct violation of his Britannic majesty's express prohibition, in the year 1767.

They have issued proclamations, wherein they have offered large sums of money, for the purpose of apprehending those very persons who had dared boldly, and publicly, to appear in defense of their just rights.

They did pass twelve acts of outlawry, on the 9th day of March, A. D. 1774, empowering the respective judges of their supreme court, to award execution of death against those inhabitants in said district, that they should judge to be offenders, without trial.

They have, and still continue, an unjust claim to those lands, which greatly retards emigration into, and the settlement of, this State.

They have hired foreign troops, emigrants from Scotland, at two different times, and armed them, to drive us out of possession.

They have sent the savages on our frontiers, to distress us.

They have proceeded to erect the counties of Cumberland and Gloucester, and establish courts of justice there, after they were discountenanced by the authority of Great Britain.

The free convention of the State of *New-York*, at *Harlem*, in the year 1776, unanimously voted, "That all quit-rents, formerly due to the King of Great Britain, are now due and owing to this Convention, or such future government as shall be hereafter established in this State."

In the several stages of the aforesaid oppressions, we have petitioned his Britannic majesty, in the most humble manner, for redress, and have, at very great expense received several reports in our favor; and, in other instances, wherein we have petitioned the late legislative authority of *New-York*, those petitions have been treated with neglect.

And whereas, the local situation of this State, from *New-York*, at the extreme part, is upward of four hundred and fifty miles from the seat of that government, which renders it extremely difficult to continue under the jurisdiction of said State.

Therefore, it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be, henceforth, a free and independent State; and that a just, permanent, and proper form of government, should exist in it, derived from, and founded on, the authority of the people only, agreeable to the direction of the honorable American Congress.

We the representatives of the freemen of *Vermont*, in General Convention met, for the express purpose of forming such a government,—confessing the goodness of the Great Governor of the universe, (who alone, knows to what degree of earthly happiness, mankind may attain, by perfecting the arts of government,) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves, such just rules as they shall think best for governing their future society; and being fully convinced that it is our indispensable duty, to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever,—do, by virtue of authority

vested in us, by our constituents, ordain, declare, and establish, the following declaration of rights, and frame of government, to be the CONSTITUTION of this COMMONWEALTH, and to remain in force therein, forever, unaltered, except in such articles, as shall, hereafter, on experience be found to require improvement, and which shall, by the same authority of the people, fairly delegated, as this frame of government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

CHAPTER I

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

I. THAT all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

II. THAT private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money.

III. THAT all men have a natural and unalienable right to worship ALMIGHTY GOD, according to the dictates of their own consciences and understanding, regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

IV. THAT all people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

V. THAT all power being originally inherent in, and consequently, derived from, the people; therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

VI. THAT government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable and indefeasible right to reform,

alter, or abolish, government, in such manner as shall be, by that community, judged most conducive to the public weal.

VII. THAT those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VIII. THAT all elections ought to be free; and that all freemen, having a sufficient, evident, common interest with, and attachment to, the community, have a right to elect officers, or be elected into office.

IX. THAT every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law, but such as they have, in like manner, assented to, for their common good.

X. THAT, in all prosecutions for criminal offences, a man hath a right to be heard, by himself and his counsel—to demand the cause and nature of his accusation—to be confronted with the witnesses—to call for evidence in his favor, and a speedy public trial, by an impartial jury of the country; without the unanimous consent of which jury, he cannot be found guilty; nor can be compelled to give evidence against himself; nor can any man be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

XI. THAT the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and therefore warrants, without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

XII. THAT no warrant or writ to attach the person or estate, of any freeholder within this State, shall be issued in civil action, without the person or persons, who may request such warrant or attachment, first make oath, or affirm, before the authority who may be requested to issue the same, that he, or they, are in danger of losing his, her or their debts.

XIII. THAT in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury; which ought to be held sacred.

XIV. THAT the people have a right to freedom of speech, and of writing and publishing their sentiments; therefore, the freedom of the press ought not to be restrained.

XV. THAT the people have a right to bear arms for the defense of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

XVI. THAT frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free. The people ought, therefore, to pay particular attention to

these points, in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XVII. THAT all people have a natural and inherent right to emigrate from one State to another, that will receive them; or to form a new State in vacant countries, or in such countries as they can purchase, whenever they think that thereby they can promote their own happiness.

XVIII. THAT the people have a right to assemble together, to consult for their common good—to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition or remonstrance.

XIX. THAT no person shall be liable to be transported out of this State for trial, for any offence committed within this State.

CHAPTER II

PLAN OR FRAME OF GOVERNMENT

SECTION 1. THE COMMONWEALTH OR STATE OF VERMONT, shall be governed, hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the Freemen of the same, in manner and form following.

SEC. 2. The supreme legislative power shall be vested in a House of Representatives of the Freemen or Commonwealth or State of *Vermont*.

SEC. 3. The supreme executive power shall be vested in a Governor and Council.

SEC. 4. Courts of justice shall be established in every county of this State.

SEC. 5. The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence, under such regulations, restrictions and exceptions, as the general assembly shall, by law, direct; preserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed.

SEC. 6. Every man of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behaviour, and will take the following oath (or affirmation) shall be entitled to all the privileges of a freeman of this State.

I solemnly swear, by the ever living God, (or affirm, in the presence of Almighty God,) that whenever I am called to give my vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man.

SEC. 7. The House of Representatives of the Freemen of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every town in this State, respectively. And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.

SEC. 8. The members of the House of Representatives, shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever, (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled the General Assembly of the Representatives of the Freemen of *Vermont*; and shall have power to choose their Speaker, Secretary of the State, their Clerk and other necessary officers of the house—sit on their own adjournments—prepare bills and enact them into laws—judge of the elections and qualifications of their own members—they may expel a member, but not a second time for the same cause—They may administer oaths (or affirmations) on examination of witnesses—redress grievances—impeach State criminals—grant charters of incorporation—constitute towns, boroughs, cities and counties, and shall have all other powers necessary for the legislature of a free State; but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year, the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in *Windsor*, on the second Thursday of March next.

SEC. 9. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance herein after directed, as the following oath or affirmation, viz.

"I do solemnly swear, by the ever living God, (or, I do solemnly affirm in the presence of Almighty God) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State; but will, in all things, conduct myself as a faithful, honest representative and guardian of the people, according to the best of my judgment and abilities."

And each member, before he takes his seat, shall make and subscribe the following declaration, viz.

"I do believe in one God, the Creator and Governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the protestant religion."

And no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State.

SEC. 10. Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superceded, at any time, by the General Assembly appointing another in his stead. No man shall sit in Congress longer than two years successively, nor be capable of reelection for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress.

SEC. 11. If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns, that do elect and send representatives, (provided they be a majority of the inhabited towns of the whole State) when met, shall have

all the powers of the General Assembly, as fully and amply, as if the whole were present.

SEC. 12. The doors of the house in which the representatives of the freemen of this State, shall sit, in General Assembly, shall be and remain open for the admission of all persons, who behave decently, except only, when the welfare of this State may require the doors to be shut.

SEC. 13. The votes and proceedings of the General Assembly shall be printed, weekly, during their sitting, with the yeas and nays, on any question, vote or resolution, where one-third of the members require it; (except when the votes are taken by ballot) and when the yeas and nays are so taken, every member shall have a right to insert the reasons of his votes upon the minutes, if he desire it.

SEC. 14. To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of public nature, shall be first laid before the Governor and Council, for their perusal and proposals of amendment, except temporary acts, which, after being laid before the Governor and Council, may (in case of sudden necessity) be passed into laws; and no other shall be passed into laws, until the next session of assembly. And for the more perfect satisfaction of the public, the reasons and motives for making such laws, shall be fully and clearly expressed and set forth in their preambles.

SEC. 15. The style of the laws of this State shall be,—“Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of *Vermont*, in General Assembly met, and by the authority of the same.”

SEC. 16. In order that the Freemen of this State might enjoy the benefit of election, as equally as may be, each town within this State, that consists, or may consist, of eighty taxable inhabitants, within one septenary or seven years, next after the establishing this constitution, may hold elections therein, and choose each, two representatives; and each other inhabited town in this State may, in like manner, choose each, one representative, to represent them in General Assembly, during the said septenary or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose each, one representative, forever thereafter.

SEC. 17. The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. The Freemen of each town, shall, on the day of election for choosing representatives to attend the General Assembly, bring in their votes for Governor, with his name fairly written, to the constable, who shall seal them up, and write on them, votes for the Governor, and deliver them to the representative chosen to attend the General Assembly; and, at the opening of the General Assembly, there shall be a committee appointed out of the Council and Assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count, the votes for the Governor, and declare the person who has the major part of the votes, to be Governor, for the year ensuing. And if there be no choice made, then the Council and General Assembly, by their joint ballot, shall make choice of a Governor.

The Lieutenant Governor and Treasurer, shall be chosen in the manner above directed; and each freeman shall give in twelve votes for twelve

councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.

The Council that shall act in the recess of this Convention, shall supply the place of a Council for the next General Assembly until the new Council be declared chosen. The Council shall meet annually, at the same time and place with the General Assembly; and every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office.

SEC. 18. The Governor, and in his absence, the Lieutenant or Deputy Governor, with the Council—seven of whom shall be a quorum—shall have power to appoint and commissionate all officers, (except those who are appointed by the General Assembly,) agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled, in the time and manner directed by law or this constitution. They are to correspond with other States, and transact business with officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the General Assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the justices of the supreme court; and shall have power to grant pardons, and remit fines, in all cases whatsoever, except cases of impeachment, and in cases of treason and murder—shall have power to grant reprieves, but not to pardon, until the end of the next session of the Assembly: but there shall be no remission or mitigation of punishment, on impeachments, except by act of legislation. They are also, to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by General Assembly; and they may draw upon the Treasurer for such sums as may be appropriated by the House: they may also lay embargoes, or prohibit the exportation of any commodity for any time, not exceeding thirty days, in the recess of the House only: they may grant such licenses as shall be directed by law, and shall have power to call together the General Assembly, when necessary, before the day to which they shall stand adjourned. The Governor shall be commander-in-chief of the forces of the State; but shall not command in person, except advised thereto by the Council, and then, only as long as they shall approve thereof. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

SEC. 19. All commissions shall be in the name of the freemen of the State of *Vermont*, sealed with the State seal, signed by the Governor, and in his absence, the Lieutenant Governor, and attested by the Secretary; which seal shall be kept by the Council.

SEC. 20. Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for mal-administration. All impeachments shall be before the Governor or Lieutenant Governor and Council, who shall hear and determine the same.

SEC. 21. The supreme court, and the several courts of common pleas of this State shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to perpetuating testimony, obtaining evidence from places not within this State, and the care of persons and estates of those who are *non compotes mentis*, and such other

powers as may be found necessary by future General Assemblies, not inconsistent with this constitution.

SEC. 22. Trials shall be by jury; and it is recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries.

SEC. 23. All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay; all their officers shall be paid an adequate, but moderate, compensation for their services; and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

SEC. 24. All prosecution shall commence in the name and by the authority of the freemen of the State of *Vermont*, and all indictments shall conclude with these words, "against the peace and dignity of the same." The style of all process hereafter, in this State, shall be,—The State of *Vermont*.

SEC. 25. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great.

SEC. 26. Excessive bail shall not be exacted for bailable offences: and all fines shall be moderate.

SEC. 27. That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the freemen in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probates, commissioned by the Governor and Council, during good behavior, removable by the General Assembly upon proof of maladministration.

SEC. 28. That no person, shall be capable of holding any civil office, in this State, except he has acquired, and maintains a good moral character.

SEC. 29. All elections, whether by the people or in General Assembly, shall be by ballot, free and voluntary: and any elector who shall receive any gift or reward for his vote, in meat, drink, monies or otherwise, shall forfeit his right to elect at that time, and suffer such other penalty as future laws shall direct. And any person who shall, directly or indirectly, give, promise, or bestow, any such rewards to be elected, shall thereby, be rendered incapable to serve for the ensuing year.

SEC. 30. All fines, license money, fees and forfeitures, shall be paid, according to the direction hereafter to be made by the General Assembly.

SEC. 31. All deeds and conveyances of land shall be recorded in the town clerk's office, in their respective towns.

SEC. 32. The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SEC. 33. As every freeman, to preserve his independence (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants; faction, contention, corruption and disorder among the people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

SEC. 34. The future legislature of this State, shall regulate entails, in such manner as to prevent perpetuities.

SEC. 35. To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing, by hard labor, those who shall be convicted of crimes not capital; wherein the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons; and all persons, at proper times, shall be admitted to see the prisoners at their labor.

SEC. 36. Every officer, whether judicial, executive or military, in authority under this State, shall take the following oath or affirmation of allegiance, and general oath of office, before he enter on the execution of his office.

THE OATH OR AFFIRMATION OF ALLEGIANCE

"I do solemnly swear by the ever living God, (or affirm in presence of Almighty God,) that I will be true and faithful to the State of *Vermont*; and that I will not, directly or indirectly, do any act or thing, prejudicial or injurious, to the constitution or government thereof, as established by Convention."

THE OATH OR AFFIRMATION OF OFFICE

"I do solemnly swear by the ever living God, (or affirm in presence of Almighty God) that I will faithfully execute the office of for the of; and will do equal right and justice to all men, to the best of my judgment and abilities, according to law."

SEC. 37. No public tax, custom or contribution shall be imposed upon, or paid by, the people of this State, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clear to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SEC. 38. Every foreigner of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer, land or other real estate; and after one years residence, shall be deemed a free denizen thereof, and intitled to all the rights of a natural born subject of this State; except that he shall not be capable of being elected a representative, until after two years residence.

SEC. 39. That the inhabitants of this State, shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, and on other lands (not enclosed;) and, in like manner, to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the General Assembly.

SEC. 40. A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town; making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State ought to be established by direction of the General Assembly.

SEC. 41. Laws for the encouragement of virtue and prevention of vice and immorality, shall be made and constantly kept in force; and provision shall be made for their due execution; and all religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations, as the General Assembly of this State shall direct.

SEC. 42. All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly.

SEC. 43. The declaration of rights is hereby declared to be a part of the Constitution of this State, and ought never to be violated, on any pretence whatsoever.

SEC. 44. In order that the freedom of this Commonwealth may be preserved inviolate, forever, there shall be chosen, by ballot, by the freemen of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty five, and on the last Wednesday in March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chosen—except they shall not be out of the Council or General Assembly—to be called the Council of Censors; who shall meet together, on the first Wednesday of June next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a Convention, in which two-thirds of the whole number elected shall agree; and whose duty it shall be to enquire whether the constitution has been preserved inviolate, in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people; or assumed to themselves, or exercised, other or greater powers, than they are entitled to by the constitution. They are also to enquire whether the public taxes have been justly laid and collected, in all parts of this Commonwealth—in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers and records; they shall have authority to pass public censures—to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election, and no longer. The said Council of Censors shall also have power to call a Convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this constitution which may be defective—

explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

APPENDIX B

CONSTITUTION OF INDIANA, 1851¹

PREAMBLE

To the end that justice be established, public order maintained, and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

ARTICLE 1

BILL OF RIGHTS

SECTION 1. We declare, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the People; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the People have, at all times, an indefeasible right to alter and reform their government.

SEC. 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

SEC. 5. No religious test shall be required, as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

SEC. 8. The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely,

¹ *Constitution of the State of Indiana and of the United States.* Issued by the Legislative Bureau, State House, Indianapolis, Ind., January, 1927.

on any subject whatever; but for the abuse of that right, every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

SEC. 12. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

SEC. 13. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

SEC. 20. In all civil cases, the right of trial by jury shall remain inviolate.

SEC. 21. No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

SEC. 23. The General Assembly shall not grant to any citizen, or class

of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

SEC. 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.

SEC. 27. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demand it.

SEC. 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood, or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

SEC. 32. The people shall have a right to bear arms, for the defense of themselves and the State.

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State.

ARTICLE 2

SUFFRAGE AND ELECTION

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and

in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.

SEC. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

SEC. 5. [Stricken out by constitutional amendment of March 24, 1881.] ¹

SEC. 6. Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also*, That counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.

SEC. 11. In all cases in which it is provided, that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

SEC. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such

¹ As adopted in 1851, Sec. 5 provided that "No Negro or Mulatto shall have the right of suffrage."

times as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all Judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.²

ARTICLE 3

DISTRIBUTION OF POWERS

SECTION 1. The powers of the Government are divided into three separate departments: The Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

ARTICLE 4

LEGISLATIVE

SECTION 1. The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana"; and no law shall be enacted, except by bill.

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however*, That the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.³

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of

² As adopted in 1851, Sec. 14 provided that "All general elections shall be held on the second Tuesday in October."

³ As adopted in 1851, Sec. 4 and Sec. 5 provided for enumeration and apportionment on the basis of the number of white male voters. The amendment which struck out the word "white" was adopted March 14, 1881.

male inhabitants, above twenty-one years of age, in each: *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

SEC. 6. A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

SEC. 7. No person shall be a Senator or a Representative who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district, whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session.

SEC. 10. Each House, when assembled, shall choose its own officers, the President of the Senate excepted; judge the elections, qualifications and returns of its own members; determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall be entitled to no compensation, from the end of the said five days, until an organization shall have been effected.

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, at any one time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers, necessary for a branch of the Legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives.

SEC. 18. Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

SEC. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

SEC. 22. The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required⁴;

In relation to interest on money:

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

SEC. 24. Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the Presiding Officers of the respective Houses.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect, until the same shall have been published and circulated in the several counties of the State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law.

SEC. 29. The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the People.

⁴ As adopted in 1851, this section prohibited the passage of local and special laws in relation to fees and salaries. It was amended in 1881 to provide that the salaries of public officials may be graded according to population and the necessary services required.

ARTICLE 5

EXECUTIVE

SECTION 1. The executive power of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years, in any period of eight years.

SEC. 2. There shall be a Lieutenant-Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant-Governor, the electors shall designate, for whom they vote as Governor, and for whom as Lieutenant-Governor. The returns of every election for Governor and Lieutenant-Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant-Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant-Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant-Governor, who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices, who shall not have attained the age of thirty years.

SEC. 8. No member of Congress, or person holding any office under the United States or under this State, shall fill the office of Governor or Lieutenant-Governor.

SEC. 9. The official term of the Governor and Lieutenant-Governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant-Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant-Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed or a Governor be elected.

SEC. 11. Whenever the Lieutenant-Governor shall act as Governor,

or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 14. Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor, within two days next previous to the final adjournment of the General Assembly.

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

SEC. 16. He shall take care that the laws be faithfully executed.

SEC. 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however,* That the General Assembly may, by law, constitute a council to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other

State office, or in the office of Judge of any court; the Governor shall fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

SEC. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected.

SEC. 23. The Lieutenant-Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person, acting as Governor, shall receive the compensation attached to the office of Governor.

SEC. 24. Neither the Governor nor Lieutenant-Governor shall be eligible to any other office, during the term for which he shall have been elected.

ARTICLE 6

ADMINISTRATIVE

SECTION 1. There shall be elected, by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices, more than four years in any period of six years.

SEC. 2. There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor and Recorder, shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder, or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff, more than four years in any period of six years.

SEC. 3. Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.

SEC. 4. No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof, during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties, out of which the same shall have been taken.

SEC. 5. The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

SEC. 6. All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.

SEC. 9. Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.

ARTICLE 7

JUDICIAL

SECTION 1. The judicial power of the State shall be vested in a Supreme Court, Circuit Courts and such other courts as the General Assembly may establish.⁵

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judges shall be elected by the electors of the State at large.

SEC. 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

SEC. 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution; but no Judge shall be allowed to report such decisions.

⁵ As adopted in 1851, the word "inferior" was used instead of the word "other" where it now occurs in this section. The amendment to this section was adopted in 1881.

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one Judge and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide, by law, that the Judge of one circuit may hold the Courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or other cause, to hold the Courts in his circuit, provision may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each judicial circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.

SEC. 12. Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

SEC. 14. A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.

SEC. 17. The General Assembly may modify, or abolish, the Grand Jury system.

SEC. 18. All criminal prosecutions shall be carried on, in the name, and by the authority, of the State; and the style of all process shall be: "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other Courts of Justice; but such tribunals or other Courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or Court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, simplify, and abridge, the rules,

practice, pleadings, and forms, of the Courts of justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said Commissioners to reduce into a systematic code, the general statute law of the State; and said Commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgement and amendment, as to said Commissioners may seem necessary or proper. Provision shall be made, by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.

SEC. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all Courts of justice.

ARTICLE 8

EDUCATION

SECTION 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

SEC. 2. The Common School fund shall consist of the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the swamp lands, granted to the State of Indiana by the act of Congress of the twenty-eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

SEC. 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision,

by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be reinvested, for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE 9

STATE INSTITUTIONS

SECTION 1. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide houses of refuge, for the correction and reformation of juvenile offenders.

SEC. 3. The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

ARTICLE 10

FINANCE

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

SEC. 3. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

SEC. 4. An accurate statement of the receipts and expenditures of the

public money, shall be published with the laws of each regular session of the General Assembly.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

SEC. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act, passed January 29, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.⁶

ARTICLE 11

CORPORATIONS

SECTION 1. The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or money institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

⁶ Section 7 was not a part of the Constitution as originally adopted. It was proposed by the General Assembly of 1871, re-adopted by the General Assembly of 1872, convened in special session, and was ratified at a special election held on February 18, 1873.

SEC. 6. The stockholders in every bank or banking company shall be individually responsible, to an amount, over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

SEC. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed, by law, to individuals loaning money.

SEC. 10. Every bank or banking company, shall be required to cease all banking operations, within twenty years from the time of its organization, and promptly thereafter to close its business.

SEC. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

ARTICLE 12

MILITIA

SECTION 1. The militia shall consist of all able-bodied white male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained, in such manner as may be provided by law.

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

SEC. 6. No person, conscientiously opposed to bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE 13

POLITICAL AND MUNICIPAL CORPORATIONS

SECTION 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporations shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.⁷

ARTICLE 14

BOUNDARIES

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the East, by the meridian line which forms the western boundary of the State of Ohio; on the South, by the Ohio River, from the mouth of the Great Miami River to the mouth of the Wabash River; on the West, by a line drawn along the middle of the Wabash River, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash River; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the North, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

⁷ The original Art. XIII as adopted in 1851 was stricken out and the present Article inserted in 1881. The original article was as follows:

Section 1. No negro or mulatto shall come into, or settle in, the State, after the adoption of this Constitution.

Sec. 2. All contracts made with any negro or mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Sec. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such negroes and mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Sec. 4. The General Assembly shall pass laws to carry out the provisions of this article.

SEC. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio River, and with the State of Illinois on the Wabash River, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE 15

MISCELLANEOUS

SECTION 1. All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

SEC. 4. Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.

SEC. 5. There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county, under that area, be further reduced.

SEC. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of outlot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal, shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly, to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

ARTICLE 16

AMENDMENTS

SECTION 1. Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall

be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

SCHEDULE

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they shall expire or be repealed.

Second. All indictments, prosecutions, suits, pleas, complaints, and other proceedings, pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.

Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force and inure to the use of those concerned.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant-Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Auditor and Treasurer of State, and State

Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall continue in their respective offices, until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution, (except as in this Constitution otherwise provided), shall continue in office, until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office, after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.

Thirteenth. At the time of submitting this Constitution to the electors, for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.

Fourteenth. No Article or section of this Constitution shall be submitted as a distinct proposition, to a vote of the electors, otherwise than as herein provided.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same, by proper metes and bounds, of equal portions, as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied, according to the intention of the grantor.

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-one; and of the Independence of the United States, the seventy-fifth.

APPENDIX C

CONSTITUTION FOR THE STATE OF ARIZONA ¹

Adopted by the Constitutional Convention, held at Phoenix, Arizona, from
October 10 to December 9, 1910

PREAMBLE

We, the people of the State of Arizona, grateful to Almighty God for
our liberties, do ordain this Constitution.

ARTICLE 1

STATE BOUNDARIES

The boundaries of the State of Arizona shall be as follows, namely: Beginning at a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers, as fixed by the Gadsden Treaty between the United States and Mexico, being in latitude thirty-two degrees, twenty-nine minutes, forty-four and forty-five one hundredths seconds north, and longitude one hundred and fourteen degrees, forty-eight minutes, forty-four and fifty-three one-hundredths seconds west of Greenwich; thence along and with the international boundary line between the United States and Mexico in a southeastern direction to Monument Number 127 on said boundary line, in latitude thirty-one degrees, twenty minutes north; thence east along and with said parallel of latitude, continuing on said boundary line to an intersection with the meridian of longitude one hundred nine degrees, two minutes, fifty-nine and twenty-five one hundredths seconds west, being identical with the southwestern corner of New Mexico; thence north along and with said meridian of longitude and the west boundary of New Mexico to an intersection with the parallel of latitude thirty-seven degrees north, being the common corner of Colorado, Utah, Arizona and New Mexico; thence west along and with said parallel of latitude and the south boundary of Utah to an intersection with the meridian of longitude one hundred fourteen degrees, two minutes, fifty-nine and twenty-five one-hundredths seconds west, being on the east boundary line of the State of Nevada; thence south along and with said meridian of longitude and the east boundary of said State of Nevada, to the center of the Colorado River; thence down the mid-channel of said Colorado River in a southern direction along and with the east boundaries of Nevada, California and the Mexican Territory of Lower California, successively, to the place of beginning.

¹ Pamphlet edition, compiled by Con. P. Cronin, State Law and Legislative Reference Librarian in collaboration with C. O. Case, Superintendent of Public Instruction. Phoenix, 7925.

ARTICLE 2

DECLARATION OF RIGHTS

SECTION 1. A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

SEC. 2. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SEC. 3. The Constitution of the United States is the supreme law of the land.

SEC. 4. No person shall be deprived of life, liberty, or property without due process of law.

SEC. 5. The right of petition, and of the people peaceably to assemble for the common good, shall never be abridged.

SEC. 6. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

SEC. 7. The mode of administering an oath, or affirmation, shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SEC. 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SEC. 9. No law granting irrevocably any privilege, franchise, or immunity shall be enacted.

SEC. 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SEC. 11. Justice in all cases shall be administered openly, and without unnecessary delay.

SEC. 12. The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

SEC. 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

SEC. 14. The privileges of the writ of habeas corpus shall not be suspended by the authorities of the State.

SEC. 15. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

SEC. 16. No conviction shall work corruption of blood, or forfeiture of estate.

SEC. 17. Private property shall not be taken for private use except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of records, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SEC. 18. There shall be no imprisonment for debt, except in cases of fraud.

SEC. 19. Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with bribery or illegal rebating, shall not be excused from giving testimony or producing evidence, when legally called upon to do so, on the ground that it may tend to incriminate him under the laws of the State; but no person shall be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may so testify or produce evidence.

SEC. 20. The military shall be in strict subordination to the civil power.

SEC. 21. All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SEC. 22. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

SEC. 23. The right of trial by jury shall remain inviolate, but provision may be made by law for a jury of a number of less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of a jury in civil cases where the consent of the parties interested is given thereto.

SEC. 24. In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf,

to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and in no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

SEC. 25. No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall ever be enacted.

SEC. 26. The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.

SEC. 27. No standing army shall be kept up by this State in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

SEC. 28. Treason against the State shall consist only in levying war against the State, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SEC. 29. No hereditary emoluments, privileges, or powers shall be granted or conferred, and no law shall be enacted permitting any perpetuity or entailment in this State.

SEC. 30. No person shall be prosecuted criminally in any court of record for felony or misdemeanor, otherwise than by information or indictment; no person shall be prosecuted for felony by information without having had a preliminary examination before a magistrate or having waived such preliminary examination.

SEC. 31. No law shall be enacted in this State limiting the amount of damages to be recovered for causing the death or injury of any person.

SEC. 32. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SEC. 33. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SEC. 34. The State of Arizona and each municipal corporation within the State of Arizona shall have the right to engage in industrial pursuits.

(Amendment submitted to voters and adopted at the general election, November 5th, 1912).

ARTICLE 3

DISTRIBUTION OF POWERS

The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive and the Judicial; and, except as provided in this Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

ARTICLE 4

LEGISLATIVE DEPARTMENT

I. INITIATIVE AND REFERENDUM

SECTION 1. (1) The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

(2) The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the Constitution.

(3) The second of these reserved powers is the Referendum. Under this power the Legislature, or five per centum of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the Legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State Government and State institutions; but to allow opportunity for Referendum Petitions, no Act passed by the Legislature shall be operative for ninety days after the close of the session of the Legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the Departments of State and of State Institutions; Provided; that no such emergency measure shall be considered passed by the Legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each House of the Legislature, taken by roll call of ayes and nays, and also approved by the Governor; and should such measure be vetoed by the Governor, it shall not become a law unless it shall be approved by the votes of three-fourths of the members elected to each House of the Legislature, taken by roll call of ayes and nays.

(4) All petitions submitted under the power of the Initiative shall be known as Initiative Petitions, and shall be filed with the Secretary of State not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the Referendum shall be known as Referendum Petitions, and shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which shall have passed the measure to which the Referendum is applied. The filing of a Referendum Petition against any item, section, or part of any measure shall not prevent the remainder of such measure from becoming operative.

(5) Any measure or amendment to the Constitution proposed under the Initiative, and any measure to which the Referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the Governor, and not otherwise.

(6). The veto power of the Governor, or the power of the Legislature, to repeal or amend, shall not extend to initiative or referendum measures approved by a majority vote of the qualified electors.^{1, 2}

(7) The whole number of votes cast for all candidates for Governor at the general election last preceding the filing of any Initiative or Referendum petition on a state or county measure shall be the basis on which the number of qualified electors required to sign such petition shall be computed.

(8) The power of the Initiative and the Referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which incorporated cities, towns, and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns, and counties may prescribe the manner of exercising said powers within the restrictions of general laws. Under the power of the Initiative fifteen per centum of the qualified electors may propose measures on such local, city, town or county matters, and ten per centum of the electors may propose the Referendum on legislation enacted within and by such city, town, or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed.

(9) Every Initiative or Referendum petition shall be addressed to the Secretary of State in the case of petitions for or on State measures, and to the clerk of the Board of Supervisors, city clerk, or corresponding officer in the case of petitions for or on county, city, or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the State, (and in the case of petitions for or on city, town, or county, measures, of the city, town, or county affected), his post-office address, the street and number, if any, of his residence, and the date on which he signed such petition. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition setting forth that each of the names on said sheet was signed in the presence of the affiant and that in the belief of the affiant each signer was a qualified elector of the State, or in the case of a city, town, or county measure, of the city, town, or county affected by the measure so proposed to be initiated or referred to the people.

(10) When any Initiative or Referendum petition or any measure referred to the people by the Legislature shall be filed, in accordance with this section, with the Secretary of State, he shall cause to be printed on the official ballot at the next regular general election the title and number of

¹ *Original provision; prior to amendment*

"The veto power of the Governor shall not extend to Initiative or Referendum measures approved by a majority of the qualified electors."

² *This amendment was submitted to the people by INITIATIVE PETITION, filed in the office of the Secretary of State, July 2nd, 1914, and approved by a majority of the votes cast thereon at the general election held on the 3d day of November, 1914. There were 16,567 votes cast for said amendment and 16,484 against and under the provisions of law by a proclamation of the Governor dated December 14, 1914, took effect on said date.*

said measure, together with the words "Yes" and "No" in such manner that the electors may express at the polls their approval or disapproval of the measure.

(11) The text of all measures to be submitted shall be published as proposed amendments to the Constitution are published, and in submitting such measures and proposed amendments the Secretary of State and all other officers shall be guided by the general law until legislation shall be especially provided therefor.

(12) If two or more conflicting measures or amendments to the Constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

(13) It shall be the duty of the Secretary of State, in the presence of the Governor and the Chief Justice of the Supreme Court, to canvass the votes for and against each of such measures or proposed amendment to the Constitution within thirty days after the election, and upon the completion of the canvass the Governor shall forthwith issue a proclamation, giving the whole number of votes cast for and against each measure or proposed amendment, and declaring such measures or amendments as are approved by a majority of those voting thereon to be law.

(14) This section shall not be construed to deprive the Legislature of the right to enact any measure.

(15) This section of the Constitution shall be, in all respects, self-executing.

SEC. 2. The Legislature shall provide a penalty for any wilfull violation of any of the provisions of the preceding section.

2. THE LEGISLATURE

SECTION 1. Until otherwise provided by law, the Senate shall consist of 19 members, and the House of Representatives of 35 members, and Senators and Representatives shall be appointed among the several counties as follows:

Apache county, 1 Senator, 1 Representative; Cochise county, 2 Senators, 7 Representatives; Coconino county, 1 Senator, 1 Representative; Gila county, 2 Senators, 3 Representatives; Graham county, 1 Senator, 2 Representatives; Greenlee county, 1 Senator, 2 Representatives; Maricopa county, 2 Senators, 6 Representatives; Mohave county, 1 Senator, 1 Representative; Navajo county, 1 Senator, 1 Representative; Pima county, 2 Senators, 3 Representatives; Pinal county, 1 Senator, 1 Representative; Santa Cruz county, 1 Senator, 1 Representative; Yavapai county, 2 Senators, 4 Representatives; Yuma county, 1 Senator, 2 Representatives.

SEC. 2. No person shall be a member of the Legislature unless he shall be a citizen of the United States at the time of his election, nor unless he shall be at least twenty-five years of age, and shall have been a resident of Arizona at least three years and of the county from which he is elected at least one year before his election.

SEC. 3. The sessions of the Legislature shall be held biennially at the Capitol of the State, and except as to the first session thereof, shall com-

mence on the second Monday of January next after the election of members of the Legislature. The first session shall convene not less than thirty nor more than sixty days after the admission of the State into the Union. The Governor may call a special session, whenever in his judgment it is advisable. In calling such special session, the Governor shall specify the subjects to be considered at such session, and at such session no laws shall be enacted except as relate to the subjects mentioned in such call.

SEC. 4. No person holding any public office of profit or trust under the authority of the United States, or this State, shall be a member of the Legislature; Provided, that appointments in the State militia and the office of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not work disqualification for membership within the meaning of this section.

SEC. 5. No member of the Legislature, during the term for which he shall have been elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created or the emoluments of which shall have been increased, during said term.

SEC. 6. Members of the Legislature shall be privileged from arrest in all cases except treason, felony, and breach of the peace, and they shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement of each session.

SEC. 7. No member of the Legislature shall be liable in any civil or criminal prosecution for words spoken in debate.

SEC. 8. Each House, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure.

SEC. 9. The majority of the members of each House shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may prescribe. Neither House shall adjourn for more than three days, nor to any place other than that in which it may be sitting, without the consent of the other.

SEC. 10. Each House shall keep a journal of its proceedings and at the request of two members the ayes and nays on roll call on any question shall be entered.

SEC. 11. Each House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds of its members, expel any member.

SEC. 12. Every bill shall be read by sections on three different days unless in case of emergency, two-thirds of either House deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote of the final passage of any bill or joint resolution shall be taken by ayes and nays on roll call. Every measure when finally passed shall be presented to the Governor for his approval or disapproval.

SEC. 13. Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in

the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

SEC. 14. No Act or section thereof shall be revised or amended by mere reference to the title of such Act, but the Act or section as amended shall be set forth and published at full length.

SEC. 15. A majority of all members elected to each House shall be necessary to pass any bill, and all bills so passed shall be signed by the presiding officer of each House in open session.

SEC. 16. Any member of the Legislative shall have the right to protest and have the reasons of his protest entered on the journal.

SEC. 17. The Legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.

SEC. 18. The Legislature shall direct by law in what manner and in what court suits may be brought against the State.

SEC. 19. No local or special laws shall be enacted in any of the following cases, that is to say:

1. Granting divorces.
2. Locating or changing county seats.
3. Changing rules of evidence.
4. Changing the law of descent or succession.
5. Regulating the practice of courts of justice.
6. Limitation of civil actions or giving effect to informal or invalid deeds.
7. Punishment of crimes and misdemeanors.
8. Laying out, opening, altering, or vacating roads, plats, streets, alleys, and public squares.
9. Assessment and collection of taxes.
10. Regulating the rate of interest on money.
11. The conduct of election.
12. Affecting the estates of deceased persons or of minors.
13. Granting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.
14. Remitting fines, penalties, and forfeitures.
15. Changing names of persons or places.
16. Regulating the jurisdiction and duties of justices of the peace.
17. Incorporation of cities, towns, or villages, or amending their charters.
18. Relinquishing any indebtedness, liability, or obligation to this State.
19. Summoning and empanelling of juries.
20. When a general law can be made applicable.

SEC. 20. The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bill, each embracing but one subject.

SEC. 21. The members of the first Legislature shall hold office until

the first Monday in January, 1913. The terms of office of the members of succeeding Legislatures shall be two years.

SEC. 22. Until otherwise provided by law, members of the Legislature shall receive seven dollars per day; Provided, however, that they shall receive such salary for a period not to exceed sixty days in any one session. They shall also receive mileage one way, by the shortest practicable route, at the rate of twenty cents per mile.

SEC. 23. It shall not be lawful for any person holding public office in this State to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as such transportation may be purchased by the general public; Provided, that this shall not apply to members of the National Guard of Arizona traveling under orders. The Legislature shall enact laws to enforce this provision.

SEC. 24. The enacting clause of every bill enacted by the Legislature shall be as follows: "Be it enacted by the Legislature of the State of Arizona," or when the Initiative is used: "Be it enacted by the People of the State of Arizona."

ARTICLE 5

EXECUTIVE DEPARTMENT

SECTION 1. The Executive Department of the State shall consist of Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, and Superintendent of Public Instruction, each of whom shall hold his office for two years beginning on the first Monday of January next after his election, except that the terms of office of those elected at the election provided for in the Enabling Act approved June 20, 1910, shall begin when the State shall be admitted into the Union, and shall end on the first Monday in January, A. D., 1913, or when their successors are elected and qualified.

The persons, respectively, having the highest number of votes cast for the office voted for shall be elected; but if two or more persons shall have an equal and the highest number of votes for any one of said offices, the two Houses of the Legislature at its next regular session shall elect forthwith, by joint ballot, one of such persons for said office.

The officers of the Executive Department during their terms of office shall reside at the seat of government, where they shall keep their offices and the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be provided by law.

SEC. 2. No person shall be eligible to any of the offices mentioned in Section 1 of this article except a male person of the age of not less than twenty-five years, who shall have been for ten years next preceding his election a citizen of the United States, and for five years next preceding his election a citizen of Arizona.

SEC. 3. The Governor shall be commander-in-chief of the military forces of the State, except when such forces shall be called into the service of the United States.

SEC. 4. The Governor shall transact all executive business with the officers of the Government, civil and military, and may require information in writing from the officers in the Executive Department upon any subject

relating to the duties of their respective offices. He shall take care that the laws be faithfully executed. He may convene the Legislature in extraordinary session. He shall communicate, by message, to the Legislature at every session the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 5. The Governor shall have power to grant reprieves, commutation, and pardons, after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as may be provided by law.

SEC. 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of his office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Secretary of State until the disability ceases, or during the remainder of the term.

SEC. 7. Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor. If he approve, he shall sign it, and it shall become a law as provided in this Constitution. But if he disapprove, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large on the journal. If after reconsideration it again passes both Houses by an aye and nay vote on roll call of two-thirds of the members, elected to each House, it shall become a law as provided in this Constitution, notwithstanding the Governor's objections. This Section shall not apply to emergency measures as referred to in Section 1 of the Article on the Legislative Department.

If any bill be not returned within five days after it shall have been presented to the Governor (Sunday excepted) such bill shall become a law in like manner as if he had signed it, unless the Legislature by its final adjournment prevents its return, in which case it shall be filed with his objections in the office of the Secretary of State within ten days after such adjournment (Sundays excepted) or become a law as provided in this Constitution. After the final action by the Governor, or following the adoption of a bill notwithstanding his objection, it shall be filed with the Secretary of State.

If any bill presented to the Governor contains several items of appropriations of money, he may object to one or more of such items while approving other portions of the bill. In such case he shall append to the bill at the time of signing it, a statement of the item or items which he declines to approve, together with his reasons therefor, and such item or items shall not take effect unless passed over the Governor's objections as in this section provided.

The veto power of the Governor shall not extend to any bill passed by the Legislature and referred to the people for adoption or rejection.

SEC. 8. When any office, shall, from any cause, become vacant, and no mode shall be provided by the Constitution or by law, for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

SEC. 9. The powers and duties of Secretary of State, State Treasurer, State Auditor, Attorney-General, and Superintendent of Public Instruction shall be as prescribed by law.

SEC. 10. No person shall be eligible to succeed himself to the office

of State Treasurer for the succeeding two years after the expiration of the term for which he shall have been elected.

SEC. 11. The returns of the election for all State officers shall be canvassed, and certificates of election issued by the Secretary of State, in such manner as may be provided by law.

SEC. 12. All commissions shall issue in the name of the State, and shall be signed by the Governor, sealed with the seal of the State, and attested by the Secretary of State.

SEC. 13. Until otherwise provided by law the salaries of the State officers shall be as follows:

Governor, four thousand dollars per annum.

Secretary of State, three thousand five hundred dollars per annum.

State Auditor, three thousand dollars per annum.

State Treasurer, three thousand dollars per annum.

Attorney-General, twenty-five hundred dollars per annum.

Superintendent of Public Instruction, twenty-five hundred dollars per annum.

ARTICLE 6

JUDICIAL DEPARTMENT

SECTION 1. The judicial power of the State shall be vested in a supreme court, superior courts, justices of the peace, and such courts inferior to the superior courts as may be provided by law.

SEC. 2. The Supreme Court shall consist of three judges, a majority of whom shall be necessary to form a quorum and pronounce a decision. The said court shall always be open for the transaction of business, except on non-judicial days. In the determination of causes, all decisions of the court shall be given in writing, and the grounds of the decision shall be stated. The number of judges may be increased or diminished from time to time by law; Provided, that said court shall at all times be constituted of at least three judges.

SEC. 3. Judges of the Supreme Court shall be elected at the general election to be held under the provisions of the Enabling Act approved June 20, 1910. Their term of office shall be co-terminous with that of the Governor of the State elected at the same time, and the one receiving the highest number of votes shall be the chief justice. At the first general State election thereafter, held under this Constitution, at which a Governor is voted for, three judges of the Supreme Court shall be elected, and the judges elected thereat shall be classified by lot, so that one shall hold office for a term of six years, and one for a term of four years, and one for a term of two years, from and after the first Monday in January next succeeding said election. The lot shall be drawn by the judges-elect, who shall assemble for that purpose at the State Capitol, and shall cause the results to be certified to the Secretary of State, who shall file the same in his office.

The judge having the shortest time to serve, and not holding his office by appointment or by election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the Supreme Court. In case of absence of the chief justice, the judge having in like manner the shortest time to serve shall preside.

After the first State election one judge shall be selected every two years at the general election, and the term of the judge elected shall be six years from and after the first Monday in January next succeeding his election, and judges so elected shall hold office until their successors are elected and qualify.

If a vacancy occur in the office of judge of the Supreme Court, the Governor shall appoint a person to fill such vacancy until the election and qualification of a judge to hold said office, which election shall take place at the next succeeding general election, and the person so elected shall hold office for the remainder of the unexpired term.

Whenever for any reason any judge shall be disqualified from acting in any case brought before said court, the remaining judges of said court shall call one of the judges of the Superior Court to sit with them on the hearing of said cause.

The sessions of the Supreme Court shall be held at the seat of government.

The judges of the Supreme Court shall be elected at the general State election by the qualified electors of the State at large. The names of all candidates for the office of judge of the Supreme Court shall be placed on the regular ballot in alphabetical order without partisan or other designation except the title of office.

SEC. 4. The Supreme Court shall have original jurisdiction in habeas corpus, and quo warranto and mandamas as to all State officers. It shall have appellate jurisdiction in all actions and proceedings, but its appellate jurisdiction shall not extend to civil actions at law for recovery of money or personal property where the original amount in controversy, or the value of the property, does not exceed the sum of two hundred dollars, unless the action involves the validity of a tax, impost, assessment, toll, municipal fine, or statute.

The Supreme Court shall also have power to issue writs of mandamus, review prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction.

The Supreme Court shall have original and exclusive jurisdiction to hear and determine all causes between counties concerning disputed boundaries and surveys thereof, or concerning claims of one county against another. Such trials shall be to the court without a jury.

Each judge of the Supreme Court shall have power to issue writs of habeas corpus to any part of the State upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself, or before the Supreme Court, or before any superior court of the State or any judge thereof.

SEC. 5. There shall be in each of the organized counties of the State a superior court, for which at least one judge shall be elected by the qualified electors of the county at the general election; Provided, that for each county having a census enumeration greater than thirty thousand inhabitants, one judge of the superior court for every additional thirty thousand inhabitants, or majority fraction thereof, may be provided by law. In any county where there shall be more than one judge of the superior court, there may be as many sessions of the superior court at the same time as there are judges thereof, and the business of the court shall be so distributed and assigned by law, or in the absence of legislation therefor, by such rules and orders of the court as shall best promote and secure the convenient and expeditious transaction thereof.

The judgments, decrees, orders, and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court had presided at such session.

The first judges of the superior court shall be elected at the general election to be held under the provisions of the Enabling Act approved June 20, 1910. Their term of office shall be co-terminous with that of the Governor of the State elected at the same time. Thereafter the term of office of all judges of the superior court shall be four years, from and after the first Monday in January next succeeding their election and until their successors are elected and qualify.

All judges of the superior court shall be elected at the general State election by the qualified electors of their respective counties. The names of all candidates for the office of judge of the superior court shall be placed on the regular ballot in alphabetical order, without any partisan or other designation except the title of the office. If a vacancy occur in the office of judge of the superior court, the Governor shall appoint a person to fill the vacancy until the election and qualification of a judge to hold said office, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

SEC. 6. The superior court shall have original jurisdiction in all cases of equity and in all cases at law which involve the title to, or the possession of, real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to two hundred dollars exclusive of interest and costs, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in solvency; of actions to prevent or abate nuisance; of all matters of probate; of divorce and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for.

The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. Said court shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. The process of said court shall extend to all parts of the State.

The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting dependents, neglected, incorrigible or delinquent children, or children accused of crime, under the age of eighteen years. The judges of said courts must hold examinations in chambers of all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and shall have the power, in their discretion, to suspend criminal prosecution for any offenses that may have been committed by such children. The power of said judges to control such children shall be as prescribed by law.

The superior court shall at all times, except on non-judicial days, be open for the determination of non-jury civil causes and for the transaction of business. For the determination of civil causes and matters in which a jury demand has been entered, and for the trial of criminal causes, a trial jury shall be drawn and summoned from the body of the county at least three times a year.

Superior courts and their judges shall have the power to issue writs

of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by, or on behalf of, any person in actual custody in their respective counties. Injunctions, attachments, and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days. Grand juries shall be drawn and summoned only by order of the superior court.

SEC. 7. The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and in case of the disqualification or the inability of the judge thereof to serve, and upon the request of the Governor, shall do so.

SEC. 8. Any judicial officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office; Provided, that in case of extreme necessity, the Governor may extend the leave of absence such time as the necessity thereof shall exist.

SEC. 9. The number of justices of the peace to be elected in incorporated cities and towns, and in precincts, and the powers, duties, and jurisdiction of justices of the peace, shall be provided by law; Provided, that such jurisdiction granted shall not trench upon the jurisdiction of any court of record, except that said justices shall have concurrent jurisdiction with the superior court in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damage claimed does not exceed two hundred dollars; and Provided that justices of the peace may be made police justices of incorporated cities and towns. Prosecution may be instituted in court other than courts of record upon sworn complaint.

SEC. 10. The Supreme Court and superior courts shall be courts of record. Other courts of record may be established by law, but courts of justices of the peace shall not be courts of record.

The salaries of the judges of the Supreme Court shall be paid by the State. One-half of the salary of each of the judges of the superior court shall be paid by the State, and the other one-half by the county for which he is elected. Until otherwise provided by law, each of the judges of the Supreme Court shall receive an annual salary of five thousand dollars. Until otherwise provided by law, the judges of the superior courts in and for the counties of Maricopa, Pima, Yavapai, Gila, and Cochise shall each receive four thousand dollars per annum; the judge of the superior court in and for the county of Greenlee shall receive three thousand five hundred dollars per annum; and the judges of the superior courts in and for the counties of Coconino, Apache, Navajo, Santa Cruz, Yuma, Pinal, Graham and Mohave shall each receive three thousand dollars per annum.

SEC. 11. Judges of the Supreme Court and judges of the superior courts shall not be eligible to any office or public employment other than a judicial office of employment, during the term for which they shall have been elected.

SEC. 12. Judges shall not charge juries with respect to matters of facts nor comment thereon, but shall declare the law.

No judge of a court of record shall practice law in any court in this State during his continuance in office.

SEC. 13. No person shall be eligible for the office of judge of the Supreme Court, unless he shall be learned in the law, at least thirty years

of age, and shall have been a judge of, or admitted to practice before, the highest court in Arizona for at least five years, and shall have been a resident of Arizona for five years next preceding his election.

No person shall be eligible for the office of judge of the superior court, unless he shall be learned in the law, at least twenty-five years of age, and shall have been admitted to practice before the highest court in Arizona for at least two years and shall have been a resident of Arizona for two years next preceding his election.

SEC. 14. The judges of the Supreme Court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as may be prescribed by law; and the Supreme Court shall have the power to fix said salary until such salary shall be determined by law.

SEC. 15. Every case submitted to the judge of a superior court for his decision shall be decided within sixty days from the submission thereof; Provided, that if within said period of sixty days, a rehearing shall have been ordered, the period within which he must decide shall commence at the time the case is submitted on such rehearing.

SEC. 16. Provisions for the speedy publication of the opinions of the Supreme Court shall be made by law, and all opinions shall be free for publication by any person.

SEC. 17. The judges of the Supreme Court shall appoint a clerk of that court, who shall be removable at their pleasure and shall receive such compensation, by salary only, as may be provided by law; and the Supreme Court shall have power to fix said salary until such salary shall be determined by law.

SEC. 18. There shall be elected in each county, by the qualified electors thereof, at the time of the election of judges of the superior court thereof, a clerk of the superior court, for a term of four years, who shall have such powers and perform such duties and receive such compensation, by salary only, as shall be provided by law. Until such salary shall be fixed by law the board of Supervisors shall fix such salary. The term of the first clerk elected shall be co-terminous with that of the judge of said county.

SEC. 19. The judges of superior courts may appoint such court commissioners in their respective counties as may be deemed necessary, who shall have such powers and perform such duties and receive such compensation as may be provided by law.

SEC. 20. The style of all process shall be "The State of Arizona," and all prosecutions shall be conducted in the name of the State of Arizona and by its authority.

SEC. 21. Every judge of the Supreme Court and every judge of the superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the Secretary of State.

SEC. 22. The pleadings and proceedings in criminal causes in the courts shall be as provided by law. No cause shall be reversed for technical

error in pleading or proceedings when upon the whole case it shall appear that substantial justice has been done.

SEC. 23. All laws relating to the authority, jurisdiction, practice, and procedure of district and probate courts under laws heretofore enacted by the Legislative Assembly of the Territory of Arizona and in force at the time of the admission of the State into the Union, and not inconsistent with this Constitution, shall, so far as applicable, apply to and govern superior courts, until altered or repealed. Until otherwise provided, superior courts have the same appellate jurisdiction in cases arising in courts of justices of the peace as district courts now have under said laws.

SEC. 24. No change made by the Legislature in the number of judges shall work the removal of any judge from office; and no judge's salary shall be reduced during the term of office for which he was elected.

ARTICLE 7

SUFFRAGE AND ELECTION

SECTION 1. All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting shall be preserved.

SEC. 2. No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one years or over, and shall have resided in the State one year immediately preceding such election. The word "citizen" shall include persons of the male and female sex.

The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the State, or any political division or municipality thereof, on account of sex, and the right to register, to vote and to hold office under any law now in effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike.

No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

(Amendment submitted to voters and adopted at the general election, November 5, 1912).

SEC. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or while a student at any institution of learning, or while kept at any almshouse or other asylum at public expense, or while confined in any public jail or prison.

SEC. 4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at any election, and in going thereto and returning therefrom.

SEC. 5. No elector shall be obliged to perform military duty on the day of an election, except in time of war or public danger.

SEC. 6. No soldier, seaman, or marine, in the army or navy of the

United States shall be deemed a resident of this State in consequence of his being stationed at any military or naval place within this State.

SEC. 7. In all elections held, by the people, in this State, the person or persons, receiving the highest number of legal votes shall be declared elected.

SEC. 8. Qualifications for voters at school elections shall be as are now, or as may hereafter be, provided by law.

SEC. 9. For the purpose of obtaining an advisory vote of the people, the Legislature shall provide for placing the names of candidates for United States Senator on the official ballot at the general election next preceding the election of a United States Senator.

SEC. 10. The Legislature shall enact a direct primary election law, which provides for the nomination of candidates for all elective, State, county, and city offices, including candidates for United States Senator and for Representative in Congress.

SEC. 11. There shall be a general election of representatives in Congress, and of State, county, and precinct officers on the first Tuesday after the first Monday in November of the first even numbered year after the year in which Arizona is admitted to Statehood and biennially thereafter.

SEC. 12. There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.

SEC. 13. Questions upon bond issues or special assessments shall be submitted to the vote of property tax-payers, who shall also in all respects be qualified electors of the State, and of the political subdivision thereof affected by such question.

SEC. 14. No fee shall ever be required in order to have the name of any candidate placed on the official ballot for any election or primary.

SEC. 15. Every person elected or appointed to any office of trust or profit under the authority of the State, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which said person shall be elected or appointed.

(Amendment submitted to voters and adopted at the general election, November 5, 1912).

SEC. 16. The Legislature, at its first session, shall enact a law providing for general publicity, before and after election, of all campaign contributions to, and expenditures of campaign committees and candidates for public office.

ARTICLE 8

REMOVAL FROM OFFICE

I. RECALL OF PUBLIC OFFICERS

SECTION 1. Every public officer in the State of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include

the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer may by petition, which shall be known as a Recall Petition demand his recall.

(The above section is in the original form as adopted by the people at the election held for the ratification of the Constitution. The resolution of Congress, August 21, 1911, inserted the words "except members of the judiciary." The amendment restored the section to its original form as adopted by the Constitutional Convention and approved by the people).

SEC. 2. Every Recall Petition must contain a general statement in not more than two hundred words, of the grounds of such demand, and must be filed in the office in which petitions for nominations to the office held by the incumbent are required to be filed. The signatures to such Recall Petition need not all be on one sheet of paper, but each signer must add to his signature the date of his signing said petition, and his place of residence, giving his street and number, if any, should he reside in a town or city. One of the signers of each sheet of such petition, or the person circulating such sheet must make and subscribe an oath on said sheet, that the signatures thereon are genuine.

SEC. 3. If said officer shall offer his resignation it shall be accepted, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after a Recall Petition is filed, a special election shall be ordered to be held, not less than twenty, nor more than thirty days after such order, to determine whether such officer shall be recalled. On the ballots at said election shall be printed the reasons as set forth in the petition for demanding his recall, and in not more than two hundred words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said election shall have been officially declared.

SEC. 4. Unless he otherwise request, in writing, his name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. The candidates who shall receive the highest number of votes, shall be declared elected for the remainder of the term. Unless the incumbent receive the highest number of votes, he shall be deemed to be removed from office, upon qualification of his successor. In the event that his successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law.

SEC. 5. No Recall Petition shall be circulated against any officer until he shall have held his office for a period of six months, except that it may be filed against a member of the Legislature at any time after five days from the beginning of the first session after his election. After one Recall Petition and election, no further Recall Petition shall be filed against the same officer during the term for which he was elected, unless petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all expenses of the preceding election.

SEC. 6. The general election laws shall apply to recall elections in so far as applicable. Laws necessary to facilitate the operation of the provisions of this article shall be enacted, including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer.

2. IMPEACHMENT.

SECTION 1. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and, when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence, and shall be presided over by the Chief Justice of the Supreme Court. Should the Chief Justice be on trial, or otherwise disqualified, the Senate shall elect a judge of the Supreme Court to preside.

SEC. 2. No person shall be convicted without a concurrence of two-thirds of the Senators elected. The Governor and other State and judicial officers, except justices of courts not of record, shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit in the State. The party, whether convicted or acquitted shall, nevertheless, be liable to trial and punishment according to law.

ARTICLE 9

PUBLIC DEBT, REVENUE, AND TAXATION

SECTION 1. The power of taxation shall never be surrendered, suspended, or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only.

SEC. 2. There shall be exempted from taxation all Federal, State, county and municipal property. Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempted from taxation by law. Public debts, as evidenced by the bonds of Arizona, its counties, municipalities, or other subdivisions, shall also be exempt from taxation. There shall further be exempt from taxation, the property of widows, residents of this State, not exceeding the amount of one thousand dollars, where the total assessment of such widow does not exceed two thousand dollars. All property in the State not exempt under the laws of the United States or under this Constitution, or exempted by law under the provisions of this section, shall be subject to taxation to be ascertained as provided by law.

SEC. 3. The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the necessary ordinary expenses of the State for each fiscal year. And for the purpose of paying the State debt, if there be any, the Legislature shall provide for levying an annual tax sufficient to pay the annual interest and the principal of such debt within twenty-five years from the final passage of the law creating the debt.

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.

All taxes levied and collected for State purposes shall be paid into the State treasury in money only.

SEC. 4. The fiscal year shall commence on the first day of July in each year. An accurate statement of the receipts and expenditures of the public

money shall be published annually, in such manner as shall be provided by law. Whenever the expenses of any fiscal year shall exceed the income, the Legislature may provide for levying a tax for the ensuing fiscal year sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.

SEC. 5. The State may contract debts to supply the casual deficits or failure in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more laws, or at different periods of time, shall never exceed the sum of three hundred and fifty thousand dollars; and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained or to repay the debts so contracted, and to no other purpose.

In addition to the above limited power to contract debts the State may borrow money to repel invasion, suppress insurrection, or defend the State in time of war; but the money thus raised shall be applied exclusively to the object for which the loan shall have been authorized or to the payment of the debt thereby created. No money shall be paid out of the State treasury, except in the manner provided by law.

SEC. 6. Incorporated cities, towns, and villages may be vested by law with power to make local improvements by special assessments, or by special taxation of property benefitted. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes.

SEC. 7. Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation or become a joint owner with any person, company, or corporation, except as to such ownership as may accrue to the State by operation or provision of law.

SEC. 8. No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding four per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of a majority of the property tax-payers, who must also in all respects be qualified electors, therein voting at an election provided by law to be held for that purpose, the value of the taxable property therein to be ascertained by the last assessment for State and county purposes, previous to incurring such indebtedness; except, that in incorporated cities and towns assessments shall be taken from the last assessment for city or town purposes; "Provided, that under no circumstances shall any county or school district become indebted to an amount exceeding ten per centum of such taxable property, as shown by the last assessment roll thereof"; and provided, further, "that any incorporated city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding fifteen per centum additional, for supplying such city or town with water, artificial light, or sewers, when the works for supplying such water, light or sewers are or shall be owned and controlled by the municipality."

(Amendment submitted to voters and adopted at the general election, November 5, 1912).

SEC. 9. Every law which imposes, continues, or revives a tax shall distinctly state the tax and the objects for which it shall be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

SEC. 10. No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.

SEC. 11. The manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona shall be such as may be prescribed by law.

(Amendment submitted to voters and adopted at the general election, November 5, 1912).

SEC. 12. The law-making power shall have authority to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes, also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes, stamp, registration, production, or other specific taxes.

ARTICLE 10

STATE AND SCHOOL LANDS

SECTION 1. All lands expressly transferred and confirmed to the State by the provisions of the Enabling Act approved June 20, 1910, including all lands granted to the State and all lands heretofore granted to the Territory of Arizona, and all lands otherwise acquired by the State, shall be by the State accepted and held in trust to be disposed of in whole or in part, only in manner as in the said Enabling Act and in this Constitution provided, and for the several objects specified in the respective granting and confirmatory provisions. The natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

SEC. 2. Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands (or the lands from which such money or thing of value shall have been derived) were granted or confirmed, or in any manner contrary to the provisions of the said Enabling Act, shall be deemed a breach of trust.

SEC. 3. No mortgage or other incumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the State Capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after

the notice by publication thus provided for sales and leases of the lands themselves; Provided, that nothing herein contained shall prevent the leasing of said lands referred to in this Article, for a term of five years or less, without said advertisement herein required.

SEC. 4. All lands, lease-holds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor in any case less than the minimum price, hereinafter fixed, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

SEC. 5. No lands shall be sold for less than three dollars per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre; Provided, that the State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project, and other lands in lieu thereof shall be selected from lands of the character named and in the manner prescribed in Section Twenty-four of the said Enabling Act.

SEC. 6. No lands reserved and excepted of the lands granted to this State by the United States, actually or prospectively valuable for the development of water power or power for hydro-electric use or transmission, which shall be ascertained and designated by the Secretary of the Interior within five years after the proclamation of the President declaring the admission of the State, shall be subject to any disposition whatsoever by the State or by any officer of the State, and any conveyance or transfer of such lands made within said five years shall be null and void.

SEC. 7. A separate fund shall be established for each of the several objects for which the said grants are made and confirmed by the said Enabling Act to the State, and whenever any moneys shall be in any manner derived from any of said lands, the same shall be deposited by the State Treasurer in the fund corresponding to the grant under which the particular land producing such moneys was, by said Enabling Act, conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The State Treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the Governor and Secretary of State, and shall at times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto.

SEC. 8. Every sale, lease, conveyance, or contract of or concerning any of the lands granted or confirmed, or the use thereof or the natural products thereof made to this State by the said Enabling Act, not made in substantial conformity with the provisions thereof, shall be null and void.

SEC. 9. All lands expressly transferred and confirmed to the State, by the provisions of the Enabling Act approved June 20, 1910, including all lands granted to the State, and all lands heretofore granted to the Territory of Arizona, and all lands otherwise acquired by the State, may be sold

or leased by the State in the manner, and on the conditions, and with the limitations, prescribed by the said Enabling Act and this Constitution, and as may be further prescribed by law; Provided, that the Legislature shall provide for the separate appraisal of the lands and of the improvements on school and university lands which have been held under lease prior to the adoption of this Constitution, and for reimbursement to the actual bona fide residents or lessees of such land upon which such improvements are situated as prescribed by Title 65, Civil Code of Arizona, 1901, and in such cases only as permit reimbursements to lessees in said Title 65.

SEC. 10. The Legislature shall provide by proper laws for the sale of all State lands or the lease of such lands for terms not longer than five years, and shall further provide by said laws for the protection of the actual bona fide residents and lessees of said lands, whereby such residents and lessees shall be protected in their rights to their improvements, including water rights, in such manner that in case of lease to other parties, the former lessee shall be paid by the succeeding lessee the value of said improvements and rights, and actual bona fide residents and lessees shall have preference to renewal of their leases at a reassessed rental, fixed as provided by law.

SEC. 11. No individual, corporation, or association shall ever be allowed to purchase or lease more than one hundred and sixty acres of agricultural land, or more than six hundred and forty acres of grazing land.

ARTICLE 11

EDUCATION

SECTION 1. The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate State institutions of such character). The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind.

SEC. 2. The general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superintendent of Public Instruction, county school superintendent, and such governing boards for the State institutions as may be provided by law.

SEC. 3. The State Board of Education shall be composed of the following members: the Governor, the Superintendent of Public Instruction, the President of the University, and principals of the State normal schools, as ex-officio members, and a city superintendent of schools, a principal of a high school, and a county superintendent of schools, to be appointed by the Governor. The powers and duties of the Board shall be such as may be prescribed by law. The members of the Board shall serve without pay, but all their necessary expenses incurred in attending the meetings of the Board, and for printing, shall be provided for by law.

SEC. 4. The State Superintendent of Public Instruction shall be a

member, and secretary, of the State Board of Education, and, ex-officio, a member of any other board having control of public instruction in any State institution. His powers and duties shall be prescribed by law.

SEC. 5. The regents of the University, and the governing boards of other State Educational institutions, shall be appointed by the Governor, except that the Governor shall be ex-officio, a member of the board of regents of the University.

SEC. 6. The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible.

The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

SEC. 7. No sectarian instruction shall be imparted in any school or State educational institution that may be established under this Constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the State, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the State, or with the rights of others.

SEC. 8. A permanent State school fund for the use of the common schools shall be derived from the sale of public school lands or other public lands specified in the Enabling Act approved June 20, 1910; from all estates or distributive shares of estates that may escheat to the State; from all unclaimed shares and dividends of any corporation incorporated under the laws of Arizona; and from all gifts, devises, or bequests made to the State for general educational purposes.

The income derived from the investment of the permanent State school fund, and from the rental derived from school lands, with such other funds as may be provided by law shall be apportioned annually to the various counties of the State in proportion to the number of pupils of school age residing therein.

SEC. 9. The amount of this apportionment shall become a part of the county school fund, and the Legislature shall enact such laws as will provide for increasing the county fund sufficiently to maintain all the public schools of the county for a minimum term of six months in every school year. The laws of the State shall enable cities and towns to maintain free high schools, industrial schools, and commercial schools.

SEC. 10. The revenue for the maintenance of the respective State educational institutions shall be derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Enabling Act approved June 20, 1910, or other legislative enactment of the United States, for the use and benefit of the respective State educational institutions. In addition to such income the Legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all State educational institutions, and shall make such special appropriations as shall provide for their development and improvement.

ARTICLE 12

COUNTIES

SECTION 1. Each county of the State, now or hereafter organized, shall be a body politic and corporate.

SEC. 2. The several counties of the Territory of Arizona as fixed by statute at the time of the adoption of this Constitution are hereby declared to be the counties of the State until changed by law.

SEC. 3. Subject to change by law, there are hereby created in and for each organized county of the State the following officers who shall be elected by the qualified electors thereof: Sheriff, Recorder, Treasurer, School Superintendent, County Attorney, Assessor, County Superintendent of Roads, and Surveyor, each of whom shall be elected for a term of two years, except that such officers elected at the first election for State and County officers shall serve until the first Monday in January, 1913; and three Supervisors, whose term of office shall be provided by law, except that at the first election for county officers the candidate for Supervisor receiving the highest number of votes shall hold office until the first Monday in January, 1915, and the two candidates for Supervisor, respectively, receiving the next highest number of votes shall hold office until the first Monday in January, 1913.

SEC. 4. The duties, powers, and qualifications of such officers shall be as prescribed by law. The Board of Supervisors of each county is hereby empowered to fix salaries for all county and precinct officers within such county for whom no compensation is provided by law, and the salaries so fixed shall remain in full force and effect until changed by general law.

ARTICLE 13

MUNICIPAL CORPORATIONS

SECTION 1. Municipal corporations shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation and organization of cities and towns and for the classification of such cities and towns in proportion to population, subject to the provisions of this Article.

SEC. 2. Any city containing, now or hereafter, a population of more than three thousand five hundred, may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the State, in the following manner: A board of freeholders composed of fourteen qualified electors of said city may be elected at large by the qualified electors thereof, at a general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city. Such proposed charter shall be signed in duplicate by the members of such board, or a majority of them, and filed, one copy of said proposed charter with the chief executive officer of such city and the other with the county recorder of the county in which said city shall be situated. Such proposed charter shall then be published in one or more newspapers published, and of general circulation, within said city for at least twenty-one days if in a daily paper, or in three consecutive issues if in a weekly paper, and the first publication shall be made within twenty days after the com-

pletion of the proposed charter. Within thirty days, and not earlier than twenty days, after such publication, said proposed charter shall be submitted to the vote of the qualified electors of said city at a general or special election. If a majority of such qualified electors voting thereon shall ratify such proposed charter, it shall thereupon be submitted to the Governor for his approval, and the Governor shall approve it if it shall not be in conflict with this Constitution or with the laws of the State. Upon such approval said charter shall become the organic law of such city and supersede any charter then existing (and all amendments thereto), and all ordinances inconsistent with said new charter. A copy of such charter, certified by the chief executive officer, and authenticated by the seal, of such city, together with a statement similarly certified and authenticated setting forth the submission of such charter to the electors and its ratification by them, shall after the approval of such charter by the Governor, be made in duplicate and filed, one copy in the office of the Secretary of State and the other in the archives of the city after being recorded in the office of said County Recorder. Thereafter all courts shall take judicial notice of said charter.

The charter so ratified may be amended by amendments proposed and submitted by the Legislative authority of the city to the qualified electors thereof (or by petition as hereinafter provided), at a general or special election, and ratified by a majority of the qualified electors voting thereon and approved by the Governor, as herein provided, for the approval of the charter.

SEC. 3. An election of such board of freeholders may be called at any time by the legislative authority of any such city. Such election shall be called by the chief executive officer of any such city within ten days after there shall have been filed with him a petition demanding such election, signed by a number of qualified electors residing within such city equal to twenty-five per centum of the total number of votes cast at the next preceding general municipal election. Such election shall be held not later than thirty days after the call therefor. At such election a vote shall be taken upon the question whether further proceedings toward adopting a charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceedings shall be had, and all proceedings up to the time of said election shall be of no effect.

SEC. 4. No municipal corporation shall ever grant, extend, or renew a franchise without the approval of a majority of the qualified electors residing within its corporate limits who shall vote thereon at a general or special election, and the legislative body of any such corporation shall submit any such matter for approval or disapproval to such electors at any general municipal election, or call a special election for such purpose at any time upon thirty days' notice. No franchise shall be granted, extended, or renewed for a longer time than twenty-five years.

SEC. 5. Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation.

SEC. 6. No grant, extension, or renewal of any franchise or other use of the streets, alleys, or other public grounds, or ways, of any municipality shall divest the State or any of its subdivisions of its or their control and

regulation of such use and enjoyment; nor shall the power to regulate charges for public services be surrendered; and no exclusive franchise shall ever be granted.

ARTICLE 14

CORPORATIONS OTHER THAN MUNICIPAL

SECTION 1. The term "corporation," as used in this Article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

SEC. 2. Corporations may be formed under general laws, but shall not be created by special Acts. Laws relating to corporations may be altered, amended, or repealed at any time, and all corporations doing business in this State may, as to such business, be regulated, limited, and restrained by law.

SEC. 3. All existing charters under which a bona fide organization shall not have taken place and business commenced in good faith within six months from the time of the approval of this Constitution shall thereafter have no validity.

SEC. 4. No corporation shall engage in any business other than that expressly authorized in its charter or by the law under which it may have been or may hereafter be organized.

SEC. 5. No corporation organized outside of the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law for similar corporations organized under the laws of this State; and no foreign corporation shall be permitted to transact business within this State unless said foreign corporation is by the laws of the country, State, or Territory under which it is formed permitted to transact a like business in such country, State, or Territory.

SEC. 6. No corporation shall issue stock, except to bona fide subscribers therefor or their assignees; nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received or for labor done. The stock of corporations shall not be increased, except in pursuance of a general law, nor shall any law authorize the increase of stocks of any corporation without the consent of the person or persons holding the larger amount in value of the stock of such corporations, nor without due notice of the proposed increase having been given as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

SEC. 7. No corporation shall lease or alienate any franchise so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or of any of its privileges.

SEC. 8. No domestic or foreign corporation shall do any business in this State without having filed its articles of incorporation or a certified copy thereof with the Corporation Commission, and without having one or more known places of business and an authorized agent, or agents, in the

State upon whom process may be served. Suit may be maintained against a foreign corporation in the county where an agent of such corporation may be found, or in the county where the cause of action may arise.

SEC. 9. The right of exercising eminent domain shall never be so abridged or construed as to prevent the State from taking the property and the franchises of incorporated companies and subjecting them to public use the same as the property of individuals.

SEC. 10. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise.

SEC. 11. The shareholders or stockholders of every banking or insurance corporation or association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares or stock.

SEC. 12. Any president, director, manager, cashier, or other officer of any banking institution who shall receive, or assent to, the reception of any deposits after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances shall be individually responsible for such deposits.

SEC. 13. No persons acting as a corporation under the laws of Arizona shall be permitted to set up, or rely upon, the want of a legal organization as a defense to any action which may be brought against them as a corporation, nor shall any person or persons who may be sued on a contract now or hereafter made with such corporation, or sued for any injury now or hereafter done to its property, or for a wrong done to its interests, be permitted to rely upon such want of legal organization in his or their defense.

SEC. 14. This Article shall not be construed to deny the right of the legislative power to impose other conditions upon corporations than those herein contained.

SEC. 15. Monopolies and trust shall never be allowed in this State, and no incorporated company, co-partnership, or association of persons in this State shall directly or indirectly combine or make any contract, with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders or with any co-partnership or association of persons, or, in any manner whatever, to fix the prices, limit the production, or regulate the transportation of any product or commodity. The Legislature shall enact laws for the enforcement of this Section by adequate penalties, and in the case of incorporated companies, if necessary for that purpose, may, as a penalty declare a forfeiture of their franchises.

SEC. 16. The records, books, and files of all public service corporations, State banks, building and loan associations, trust, insurance, and guaranty

companies shall be at all times liable and subject to the full visitatorial and inquisitorial powers of the State, notwithstanding the immunities and privileges secured in the Declaration of Rights of this Constitution to persons, inhabitants, and citizens of this State.

SEC. 17. Provisions shall be made by law for the payment of a fee to the State by every domestic corporation, upon the grant, amendment, or extension of its charter, and by every foreign corporation upon its obtaining a license to do business in this State; and also for the payment, by every domestic corporation and foreign corporation doing business in this State, of an annual registration fee of not less than ten dollars, which fee shall be paid irrespective of any specific license or other tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property; and for the making, by every such corporation, at the time of paying such fee, of such report to the corporation commission of the status, business, or condition of such corporation, as may be prescribed by law. No foreign corporation shall have authority to do business in this State until it shall have obtained from the Corporation Commission a license to do business in the State, upon such terms as may be prescribed by law. The Legislature may relieve any purely charitable, social, fraternal, benevolent, or religious institution from the payment of such annual registration fee.

SEC. 18. It shall be unlawful for any corporation or organization doing business in this State, to make any contribution of money or anything of value for the purpose of influencing any election or official action.

SEC. 19. Suitable penalties shall be prescribed by law for the violation of any of the provisions of this Article.

ARTICLE 15

THE CORPORATION COMMISSION

SECTION 1. A Corporation Commission is hereby created to be composed of three persons, who shall be elected at the general election to be held under the provisions of the Enabling Act approved June 20, 1910, and whose term of office shall be co-terminous with that of the Governor of the State elected at the same time, and who shall maintain their chief office, and reside, at the State Capital. At the first general State election held under this Constitution at which a Governor is voted for, three commissioners shall be elected who shall, from and after the first Monday in January next succeeding said election, hold office as follows:

The one receiving the highest number of votes shall serve six years, and the one receiving the second highest number of votes shall serve four years, and the one receiving the third highest number of votes shall serve two years. And one commissioner shall be elected every two years thereafter. In case of vacancy in said office, the Governor shall appoint a commissioner to fill such vacancy. Such appointed commissioner shall fill such vacancy until a commissioner shall be elected at a general election as provided by law, and shall qualify. The qualifications of commissioners may be prescribed by law.

SEC. 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam

for heating or cooling purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations.

SEC. 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort and safety, and the preservation of the health, of the employees and patrons of such corporations; Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations: Provided further, that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission.

SEC. 4. The Corporation Commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public, and of any public service corporation doing business within the State, and for the purpose of the Commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the State. Said Commission shall have power to take testimony under commission or deposition within or without the State.

SEC. 5. The Corporation Commission shall have the sole power to issue certificates of incorporation to companies organizing under the laws of this State, and to issue licenses to foreign corporations to do business in this State, as may be prescribed by law.

SEC. 6. The law-making power may enlarge the powers and extend the duties of the Corporation Commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings.

SEC. 7. Every public service corporation organized or authorized under the laws of the State to do any transportation or transmission business within the State shall have the right to construct and operate lines connecting any points within the State, and to connect at the State boundaries with like lines; and every such corporation shall have the right with any of its lines to cross, intersect, or connect with, any lines of any other public service corporation.

SEC. 8. Every public service corporation doing a transportation business within the State shall receive and transport, without delay or discrimination, cars loaded or empty, property, or passengers delivered to it by any

other public service corporation doing a similar business, and deliver cars, loaded or empty, without delay or discrimination, to other transportation corporations, under such regulations as shall be prescribed by the Corporation Commission, or by law.

SEC. 9. Every public service corporation engaged in the business of transmitting messages for profit shall receive and transmit, without delay or discrimination, any messages delivered to it by any other public service corporation engaged in the business of transmitting messages for profit, and shall, with its lines, make physical connections with the lines of any public service corporation engaged in the business of transmitting messages for profit, under such rules and regulations as shall be prescribed by the Corporation Commission, or by law; Provided, that such public service corporations shall deliver messages to other such corporations, without delay or discrimination, under such rules and regulations as shall be prescribed by the Corporation Commission, or by law.

SEC. 10. Railways heretofore constructed, or that may hereafter be constructed, in this State, hereby declared public highways, and all railroad, car, express, electric, transmission, telegraph, telephone, or pipe line corporations, for the transportation of persons, or of electricity, messages, water, oil, or other property for profit, are declared to be common carriers and subject to control by law.

SEC. 11. The rolling stock and all other movable property belonging to any public service corporation in this State, shall be considered personal property, and its real and personal property, and every part thereof, shall be liable to attachment, execution, and sale in the same manner as the property of individuals; and the law-making power shall enact no laws exempting any such property from attachment, execution, or sale.

SEC. 12. All charges made for service rendered, or to be rendered, by public service corporations within this State shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service, except that the granting of free or reduced rate transportation may be authorized by law, or by the Corporation Commission, to the classes of persons described in the Act of Congress approved February 11, 1887, entitled An Act to Regulate Commerce, and the amendments thereto, as those to whom free or reduced rate transportation may be granted.

SEC. 13. All public service corporations and corporations whose stock shall be offered for sale to the public shall make such reports to the Corporation Commission, under oath, and provide such information concerning their acts and operations as may be required by law, or by the Corporation Commission.

SEC. 14. The Corporation Commission shall, to aid it in the proper discharge of its duties, ascertain the fair value of the property within the State of every public service corporation doing business therein; and every public service corporation doing business within the State shall furnish to the Commission all evidence in its possession, and all assistance in its power, requested by the Commission in aid of the determination of the value of the property within the State of such service corporation.

SEC. 15. No public service corporation in existence at the time of the

admission of this State into the Union shall have the benefit of any future legislation except on condition of complete acceptance of all provisions of this Constitution applicable to public service corporations.

SEC. 16. If any public service corporation shall violate any of the rules, regulations, orders, or decisions of the Corporation Commission, such corporation shall forfeit and pay to the State not less than one hundred dollars nor more than five thousand dollars for each such violation, to be recovered before any court of competent jurisdiction.

SEC. 17. Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders, or decrees fixed by the Corporation Commission, but the rules, regulations, orders, or decrees so fixed shall remain in force pending the decision of the courts.

SEC. 18. Until otherwise provided by law, each Commissioner shall receive a salary of three thousand dollars a year, together with his actual necessary expenses when away from home in the discharge of the duties of his office.

SEC. 19. The Corporation Commission shall have the power and authority to enforce its rules, regulations and orders by the imposition of such fines as it may deem just, within the limitations prescribed in Section 16 of this Article.

ARTICLE 16

MILITIA

SECTION 1. The militia of the State of Arizona shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, and of those between said ages who shall have declared their intention to become citizens of the United States, residing therein, subject to such exemptions as now exist, or as may hereafter be created, by the laws of the United States or of this State.

SEC. 2. The organized militia shall be designated "The National Guard of Arizona," and shall consist of such organized military bodies as now exist under the laws of the Territory of Arizona or as may hereafter be authorized by law.

SEC. 3. The organization, equipment, and discipline of the National Guard shall conform as nearly as shall be practicable to the regulations for the government of the armies of the United States.

ARTICLE 17

WATER RIGHTS

SECTION 1. The common law doctrine of riparian water rights shall not obtain or be of any force or effect in the State.

SEC. 2. All existing rights to the use of any of the water in the State for all useful or beneficial purposes are hereby recognized and confirmed.

ARTICLE 18

LABOR

SECTION 1. Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of, the State or any political subdivision of the State. The Legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violation of said laws.

SEC. 2. No child under the age of fourteen years shall be employed in any gainful occupation at any time during the hours in which the public schools of the district in which the child resides are in session; nor shall any child under sixteen years of age be employed underground in mines, or in any occupation injurious to health or morals or hazardous to life or limb; nor in any occupation at night, or for more than eight hours in any day.

SEC. 3. It shall be unlawful for any person, company, association, or corporation to require of its servants or employees as a condition of their employment, or otherwise, any contract or agreement whereby such person, company, association, or corporation shall be released or discharged from liability or responsibility on account of personal injuries which may be received by such servants or employees while in the service or employment of such person, company, association, or corporation, by reason of the negligence of such person, company, association, corporation, or the agents or employees thereof; and any such contract or agreement if made, shall be null and void.

SEC. 4. The common law doctrine of fellow servants, so far as it affects the liability of a master for injuries to his servants resulting from the acts or omissions of any other servant or servants of the common master is forever abrogated.

SEC. 5. The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.

SEC. 6. The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation.

SEC. 7. To protect the safety of employees in all hazardous occupations, in mining, smelting, manufacturing, railroad or street railway transportation, or any other industry the Legislature shall enact an Employer's Liability law, by the terms of which any employer, whether individual, association, or corporation shall be liable for the death or injury, caused by any accident due to a condition or conditions of such occupation, of any employee in the service of such employer in such hazardous occupation, in all cases in which such death or injury of such employee shall not have been caused by the negligence of the employee killed or injured.

SEC. 8. The Legislature shall enact a Workmen's Compulsory Compensation law applicable to workmen engaged in manual or mechanical labor in such employments as the Legislature may determine to be especially dangerous, by which compulsory compensation shall be required to be paid to any such workman by his employer, if in the course of such employ-

ment personal injury to any such workman from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employee, or employees, to exercise due care, or to comply with any affecting such employment; Provided, that it shall be optional with said employee to settle for such compensation, or retain the right to sue said employer as provided by this Constitution.

SEC. 9. The exchange, solicitation, or giving out of any labor "black list," is hereby prohibited, and suitable laws shall be enacted to put this provision into effect.

SEC. 10. No person not a citizen or ward of the United States, or who has not declared his intention to become a citizen, shall be employed upon, or in connection with, any State, county or municipal works or employment; Provided, that nothing herein shall be construed to prevent the working of prisoners by the State, or by any municipality thereof, on street or road work, or other public work. The Legislature shall enact laws for the enforcement, and shall provide for the punishment of any violation, of this section.

ARTICLE 19

MINES

The office of Mine Inspector is hereby established. The Legislature, at its first session, shall enact laws so regulating the operation and equipment of all mines in the State as to provide for the health and safety of workers therein and in connection therewith, and fixing the duties of said office. Upon approval of such laws by the Governor, the Governor, with the advice and consent of the Senate, shall forthwith appoint a Mine Inspector, who shall serve until his successor shall have been elected at the first general election thereafter and shall qualify. Said successor and all subsequent incumbents of said office shall be elected at general elections, and shall serve for two years.

ARTICLE 20

ORDINANCE

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this State, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

Second. Polygamous or plural marriages, or polygamous cohabitation, are forever prohibited within this State.

Third. The sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country are forever prohibited within this State.

Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.

Fifth. The lands and other property belonging to citizens of the United States residing without this State shall never be taxed at a higher rate than the lands and other property situated in this State belonging to residents thereof, and no taxes shall be imposed by this State upon lands or property situated in the State belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein shall preclude the State from taxing as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but all such lands shall be exempt from taxation so long and to such extent as Congress has prescribed or may hereafter prescribe.

Sixth. The debts and liabilities of the Territory of Arizona, and the debts of the counties thereof, valid and subsisting at the time of the passage of the Enabling Act approved June 20, 1910, are hereby assumed and shall be paid by the State of Arizona, and the State of Arizona shall, as to all such debts and liabilities, be subrogated to all the rights, including rights of indemnity and reimbursement, existing in favor of said Territory or of any of the several counties thereof, at the time of the passage of the said Enabling Act; Provided, that nothing in this ordinance shall be construed as validating or in any manner legalizing any Territorial, county, municipal, or other bonds, obligations, or evidence of indebtedness of said Territory or the counties or municipalities thereof which now are or may be invalid or illegal at the time the said State of Arizona is admitted as a State, and the Legislature or the people of the State of Arizona shall never pass any law in any manner validating or legalizing the same.

Seventh. Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and be free from sectarian control, and said schools shall always be conducted in English.

The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

Eighth. The ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter, shall be a necessary qualification for all State officers and members of the State Legislature.

Ninth. The capital of the State of Arizona, until changed by the electors voting at an election provided for by the Legislature for that purpose shall be at the City of Phoenix, but no such election shall be called or provided for prior to the thirty-first day of December, nineteen hundred and twenty-five.

Tenth. There are hereby reserved to the United States, with full acquiescence of this State, all rights and powers for the carrying out of the provisions by the United States of the Act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and Acts amendatory thereof or supplementary thereto, to the same extent as if this State had remained a Territory.

Eleventh. Whenever hereafter any of the lands contained within Indian reservations or allotments in this State shall be allotted, sold, reserved, or otherwise disposed of, they shall be subject, for a period of twenty-five years after such allotment, sale, reservation, or other disposal, to all the laws of the United States prohibiting the introduction of liquor into the Indian country.

Twelfth. The State of Arizona and its people hereby consent to all and singular the provisions of the Enabling Act approved June 20, 1910, concerning the lands thereby granted or confirmed to the State the terms and conditions upon which said grants and confirmations are made, and the means and manner of enforcing such terms and conditions, all in every respect and particular as in the aforesaid Enabling Act provided.

Thirteenth. This ordinance is hereby made a part of the Constitution of the State of Arizona, and no future Constitutional amendment shall be made which in any manner changes or abrogates this ordinance in whole or in part without the consent of Congress.

ARTICLE 21

MODE OF AMENDING

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the Legislature, or by Initiative Petition signed by a number of qualified electors equal to fifteen per centum of the total number of votes for all candidates for Governor at the last preceding general election.

Any proposed amendment or amendments which shall be introduced in either House of the Legislature, and which shall be approved by a majority of the members elected to each of the two Houses, shall be entered on the journal of each House, together with the ayes and nays thereon. When any proposed amendment or amendments shall be thus passed by a majority of each House of the Legislature and entered on the respective journals thereof, or when any elector or electors shall file with the Secretary of State any proposed amendment or amendments together with a petition therefor, signed by a number of electors equal to fifteen per centum of the total number of votes for all candidates for Governor in the last preceding general election, the Secretary of State shall submit such proposed amendment or amendments to the vote of the people at the next general election (except when the Legislature shall call a special election for the purpose of having said proposed amendment or amendments voted upon, in which case the Secretary of State shall submit such proposed amendment or amendments to the qualified electors at said election,) and if a majority of the qualified electors voting thereon shall approve and ratify such proposed amendment or amendments in said regular or special election such amend-

ment or amendments shall become a part of this Constitution. Until a method of publicity is otherwise provided by law the Secretary of State shall have such proposed amendment or amendments published for a period of at least ninety days previous to the date of said election in at least one newspaper in every county of the State in which a newspaper shall be published, in such manner as may be prescribed by law. If more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately.

SEC. 2. No convention shall be called by the Legislature to propose alterations, revisions, or amendments to this Constitution, or to propose a new Constitution, unless laws providing for such convention shall first be approved by the people on a Referendum vote at a regular or special election, and any amendments, alterations, revisions, or new Constitution proposed by such Convention shall be submitted to the electors of the State at a general or special election and be approved by the majority of the electors voting thereon before the same shall become effective.

ARTICLE 22

SCHEDULE AND MISCELLANEOUS

SECTION 1. No rights, actions, suits, proceedings, contracts, claims, or demands, existing at the time of the admission of this State into the Union, shall be affected by a change in the form of government, from Territorial to State, but all shall continue as if no change had taken place; and all process which may have been issued under the authority of the Territory of Arizona, previous to its admission into the Union, shall be as valid as if issued in the name of the State.

SEC. 2. All laws of the Territory of Arizona now in force, not repugnant to this Constitution, shall remain in force as laws of the State of Arizona until they expire by their own limitations or are altered or repealed by law; Provided, that wherever the word Territory, meaning the Territory of Arizona, appears in said laws, the word State shall be substituted.

SEC. 3. All debts, fines, penalties, and forfeitures which have accrued, or may hereafter accrue, to the Territory of Arizona shall inure to the State of Arizona.

SEC. 4. All recognizances heretofore taken, or which may be taken, before the change from a territorial to a State government, shall remain valid, and shall pass to and may be prosecuted in the name of the State, and all bonds executed to the Territory of Arizona, or to any county or municipal corporation, or to any officer, or court, in his or its official capacity, shall pass to the State authorities and their successors in office for the uses therein expressed, and may be sued for and recovered accordingly; and all the estate, real, personal, and mixed, and all judgments, decrees, bonds, specialties, choses in action, and claims, demands or debts of whatever description, belonging to the Territory of Arizona, shall inure to and vest in the State of Arizona, and may be sued for and recovered by the State of Arizona in the same manner, and to the same extent, as the same might or could have been by the Territory of Arizona.

SEC. 5. All criminal prosecutions and penal actions which may have arisen, or which may arise, before the change from a Territorial to a State

government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Arizona before the change from a Territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name, and by the authority of the State of Arizona, with like effect as though such change had not taken place, and all penalties incurred and punishments inflicted shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity, which may be pending in any of the courts, of the Territory of Arizona at the time of the change from a Territorial to a State government, shall be continued and transferred to the court of the State, or of the United States, having jurisdiction thereof.

SEC. 6. All Territorial, district, county, and precinct officers who may be in office at the time of the admission of the State into the Union shall hold their respective offices until their successors shall have qualified, and the official bonds of all such officers shall continue in full force and effect while such officers remain in office.

SEC. 7. Whenever the judge of the superior court of any county, elected or appointed under the provisions of this Constitution, shall have qualified, the several causes then pending in the district court of the Territory, and in and for such county, except such causes as would have been within the exclusive jurisdiction of the United States courts, had such courts existed at the time of the commencement of such causes within such county, and the records, papers, and proceedings of said district court, and other property pertaining thereto, shall pass into the jurisdiction and possession of the superior court of such county.

It shall be the duty of the clerk of the district court having custody of such papers, records, and property, to transmit to the clerk of said superior court the original papers in all cases pending in such district and belonging to the jurisdiction of said superior court, together with a transcript, or transcripts, of so much of the record of said district court as shall relate to the same; and until the district courts of the Territory shall be superseded in manner aforesaid, and as in this Constitution provided, the said district courts, and the judges thereof, shall continue with the same jurisdiction and powers, to be exercised in the same judicial district, respectively, as heretofore, and now, constituted.

SEC. 8. When the State is admitted into the Union, and the superior courts, in their respective counties, are organized, the books, records, papers, and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall pass into the jurisdiction and possession of the superior court of the same county created by this Constitution, and the said court shall proceed to final judgment or decree, order, or other determination, in the several matters and causes with like effect as the probate court might have done if this Constitution had not been adopted.

SEC. 9. Whenever a quorum of the judges of the Supreme Court of the State shall have been elected, and qualified, and shall have taken office, under this Constitution, causes then pending in the Supreme Court of the Territory, except such causes as would have been within the exclusive jurisdiction of the United States courts, had such courts existed at the time of the commencement of such causes, and the papers, records, and proceedings of said courts, and the seal and other property pertaining thereto,

shall pass into the jurisdiction and possession of the Supreme Court of the State, and until so superseded, the Supreme Court of the Territory, and the judges thereof, shall continue, with like powers and jurisdiction as if this Constitution had not been adopted, or the State admitted into the Union; and all causes pending in the Supreme Court of the Territory at said time, and which said causes would have been within the exclusive jurisdiction of the United States courts, had such courts existed, at the time of the commencement of such causes, and the papers, records, and proceedings of said court, relating thereto, shall pass into the jurisdiction of the United States courts, all as in the Enabling Act approved June 20, 1910, provided.

SEC. 10. Until otherwise provided by law, the seal now used in the Supreme Court of the Territory, shall be the seal of the Supreme Court of the State, except that the word "State" shall be substituted for the word "Territory" on said seal. The seal of the superior courts of the several counties of the State, until otherwise provided by law, shall be the vignette of Abraham Lincoln, with the words "Seal of the Superior Court ofCounty, State of Arizona," surrounding the vignette. The seal of municipalities, and of all county officers, in the Territory, shall be the seals of such municipalities and county officers, respectively, under the State, until otherwise provided by law, except that the word "Territory," or "Territory of Arizona," be changed to read "State" or "State of Arizona," where the same may appear on any such seals.

SEC. 11. The provisions of this Constitution shall be in force from the day on which the President of the United States shall issue his proclamation declaring the State of Arizona admitted into the Union.

SEC. 12. One Representative in the Congress of the United States shall be elected from the State at large, and at the same election at which officers shall be elected under the Enabling Act, approved June 20, 1910, and, thereafter, at such times and in such manner as may be prescribed by law.

SEC. 13. The term of office of every officer to be elected or appointed under this Constitution or the laws of Arizona shall extend until his successors shall be elected and shall qualify.

SEC. 14. Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative. Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people.

SEC. 15. Reformatory and penal institutions, and institutions for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law.

SEC. 16. It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors.

SEC. 17. All State and county officers (except notaries public) and all justices of the peace and constables, whose precinct includes a city or town or part thereof, shall be paid fixed and definite salaries, and they shall receive no fees for their own use.

SEC. 18. A State Examiner, who shall be a skilled accountant shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of two years. The State Examiner shall examine the books and accounts of such public officers, and perform such other duties, and have such other powers, as may be prescribed by law.

SEC. 19. The Legislature shall enact laws and adopt rules prohibiting the practice of lobbying on the floor of either House of the Legislature, and further regulating the practice of lobbying.

SEC. 20. The seal of the State shall be of the following design: In the background shall be a range of mountains, with the sun rising behind the peaks thereof, and at the right side of the range of mountains there shall be a storage reservoir and a dam, below which in the middle distance are irrigated fields and orchards reaching into the foreground, at the right of which are cattle grazing. To the left in the middle distance on a mountain side is a quartz mill in front of which and in the foreground is a miner standing with pick and shovel. Above this device shall be the motto: "Ditat Deus." In a circular band surrounding the whole device shall be inscribed: "Great Seal of The State of Arizona," with the year of admission of the State into the Union.

SEC. 21. The Legislature shall enact all necessary laws to carry into effect the provisions of this Constitution.

ARTICLE 23¹

This amendment was submitted to the people by INITIATIVE PETITION, filed in the office of the Secretary of State, July 2nd, 1914, and approved by a majority of the votes cast thereon, at the general election held on the 3d day of November, 1914. There were 25,887 votes cast for said amendment and 22,743 against, and under the provisions of law by a proclamation of the Governor dated December 14, 1914, became a law on said date.

PROHIBITION

SECTION 1. Ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall not be manufactured in or introduced into the State of Arizona under any pretense. Every person who sells, exchanges, gives, barter, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquor of any kind to any person in the State of Arizona, or who manufactures, or introduces into, or attempts to introduce into the State of Arizona any ardent spirits, ale, beer, wine, or intoxicating liquor of any kind, shall be guilty of a misdemeanor and upon conviction shall be imprisoned for not less than ten days nor more than two years and fined not less than twenty-five dollars and costs nor more than three hundred dollars and costs for each offense; provided, that nothing in this amendment contained shall apply to the manufacture or sale of denatured alcohol.

SEC. 2. The legislature shall by appropriate legislation provide for the carrying into effect of this amendment.

SEC. 3. This amendment shall take effect on, and be in force on and after the first day of January, 1915.

Filed July 2, 1914.

¹ Const. Amendment No. XXIII.

ARTICLE 24²

RECEIVING OR POSSESSING INTOXICATING LIQUOR

SECTION 1. It shall be unlawful for any person in the State of Arizona to receive, or cause to be received, from without the State of Arizona, for any purpose, any ardent spirits, ale, beer, wine or intoxicating liquors of any kind, and it shall be unlawful for any person in the State of Arizona to have in his possession, for any purpose, any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, which he has introduced or caused to be introduced into the State of Arizona, and it shall be unlawful for any person to transport or cause to be transported, within the State of Arizona, any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, provided, that it shall be lawful for any regularly ordained priest or clergyman of an established church to receive, transport and possess wine to be used only for sacramental purposes, and provided further, that the University of Arizona, through its Board of Regents, may introduce, receive, transport and possess grain alcohol for scientific uses, and may use and may distribute such alcohol under such restrictions and regulations as said Board of Regents may from time to time adopt, to other institutions of research and learning, for scientific uses. And provided further, that nothing herein shall prevent the introduction, transportation and possession of denatured alcohol.

SEC. 2. Every person who shall violate any provisions of section one of this article or any rule or regulation made thereunder, shall be guilty of a misdemeanor, and shall be imprisoned for not less than ten days, nor more than two years, and fined not less than twenty-five dollars and costs, and not more than three hundred dollars and costs for each offense; and the liquors received, transported or possessed in violation of section one of this article or manufactured, introduced, or disposed of in violation of Article XXIII of this constitution, shall be by the court ordered publicly destroyed.

Filed July 6th, 1916.

APPENDIX

Provisions of the Constitution before the amendments adopted at the election of November 5, 1912.

ARTICLE 7

SEC. 2. No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, except school elections as provided in Section 8 of this Article, unless such person be a male citizen of the United States of the age of twenty-one years or

² Const. Amendment No. XXIV.

This amendment was submitted to the people by INITIATIVE PETITION, filed in the office of the Secretary of State, July 6th, 1916, and approved by a majority of the votes cast thereon at the general election, held on the 7th day of November, 1916. There were 28,473 votes cast for said amendment and 17,379 against, and under the provisions of law by a proclamation of the Governor dated December 8th, 1916, took effect on said date.

over, and shall have resided in the State one year immediately preceding such election.

SEC. 15. Every male person elected or appointed to any office of trust or profit under the authority of the State or of any political division of the State, or any male deputy of such officer, shall be a qualified elector of the political division in which said person shall be elected or appointed.

ARTICLE 8

SEC. 1. Every public officer in the State of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall.

ARTICLE 8

SEC. 1. Every public officer in the State of Arizona, except members of the judiciary, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral districts may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer may by petition, which shall be known as a Recall Petition, demand his recall.

ARTICLE 9

SEC. 8. No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding four per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of a majority of the property tax-payers, who must also in all respects be qualified electors, therein voting at an election provided by law to be held for that purpose, the value of the taxable property therein to be ascertained by the last assessment for State and county purposes, previous to incurring such indebtedness; except, that in incorporated cities and towns assessments shall be taken from the last assessment for city or town purposes; provided, that any incorporated city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five per centum additional, for supplying such city or town with water, artificial light, or sewers, when the works for supplying such water, light, or sewers are or shall be owned and controlled by the municipality.

SEC. 11. There shall be a State Board of Equalization, which, until otherwise provided by law, shall consist of the chairman of the boards of supervisors in the various counties of the State; and the State Auditor, who shall be ex-officio chairman thereof; and there shall also be in each county of the State, a County Board of Equalization consisting of the board of supervisors of said county. The duty of the State Board of Equalization shall

be to adjust and equalize the valuation of the real and personal property among the several counties of the State. The duty of the County Board of Equalization shall be to adjust and equalize the valuation of real and personal property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

APPENDIX D

CONSTITUTION OF THE UNITED STATES¹

PREAMBLE

We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

[Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

¹ Drafted by a convention which met at Philadelphia on May 25 and adjourned on September 17, 1787. The Constitution became operative when ratified by 9 of the 13 states. The government created by the Constitution began operations on March 4, 1789. All parts enclosed in brackets have been superseded by later amendments.

SEC. 3. [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.]

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments [until the next meeting of the Legislature, which shall then fill such vacancies].

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for

limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any

bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the Representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the

same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

SEC. 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at

stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the

United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

ARTICLE V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments; which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.²

AMENDMENT XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.³

AMENDMENT XII

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States; the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.⁴

² The first ten amendments were proposed by Congress on September 25, 1789, and were declared ratified in 1791.

³ Submitted by Congress on March 5, 1794, and declared adopted on January 8, 1798.

⁴ Submitted by Congress on December 12, 1803, declared in force on September 25, 1804.

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.⁵

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.⁶

⁵ Submitted by Congress on February 1, 1865, declared in force December 18, 1865.

⁶ Submitted by Congress on June 16, 1866, declared in force July 28, 1868.

AMENDMENT XV

SECTION 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.⁷

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.⁸

AMENDMENT XVII

SECTION 1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the constitution.⁹

AMENDMENT XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.¹⁰

⁷ Submitted by Congress on February 27, 1869, declared in force March 30, 1870.

⁸ Submitted by Congress on July 12, 1909, declared in force February 25, 1913.

⁹ Submitted by Congress on May 16, 1912, declared in force May 31, 1913.

¹⁰ Submitted by Congress on December 19, 1917, declared in force January 29, 1919.

AMENDMENT XIX

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.¹¹

¹¹ Submitted by Congress on June 5, 1919, declared in force August 26, 1920.

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